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Promotion and protection of the rights of children

Child participation as a key element in preventing and combating the sale and sexual exploitation of children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid, in accordance with Assembly resolution 66/141.

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Report of the Special Rapporteur on the sale of children, child prostitution and child pornography

Summary

The present report is submitted pursuant to General Assembly resolution 66/141. The Special Rapporteur describes her activities in relation to the discharge of her mandate since her previous report to the Assembly.

She also analyses the role of child participation in preventing and combating the sale and sexual exploitation of children and provides practical guidance on the lessons learned in working with children as partners. She makes specific recommendations on how to establish and strengthen child participation within a rights-based comprehensive child protection system.

Contents

		Page
I.	Working methods and activities	3
	A. Working methods	3
	B. Activities	3
II.	Child participation as a key element in preventing and combating the sale and sexual exploitation of children	4
	A. Introduction	4
	B. Child participation framework	5
	C. Child participation practices	7
	D. Key lessons learned and challenges	19
III.	Conclusions and recommendations	22
	A. Conclusions	22
	B. Recommendations	23

I. Working methods and activities

A. Working methods

1. In its resolution 66/141, the General Assembly requested the Special Rapporteur on the sale of children, child prostitution and child pornography to continue to submit reports to the Assembly and the Human Rights Council on the activities undertaken in the fulfilment of her mandate. The present report contains information on the activities undertaken from August 2011 to August 2012 and provides the Special Rapporteur's analysis of child participation as a key element in preventing and combating the sale and sexual exploitation of children.

B. Activities

1. Human Rights Council

2. In her annual report, submitted to the Human Rights Council at its nineteenth session (A/HRC/19/63 and Corr.1), the Special Rapporteur focused on the protection of children from sale and sexual exploitation following humanitarian crises caused by natural disasters. There were two addenda to her report: the first dealing with her visit to Mauritius (1-11 May 2011) and the second her visit to France (21 November-2 December 2011).

2. Country visits

3. The Special Rapporteur will undertake official visits to Guatemala, from 20 to 29 August 2012, and Honduras, from 30 August to 7 September. Her country visit to India, initially scheduled to take place from 16 to 27 April, was postponed at the request of the Government.

3. Conferences, seminars and engagement with civil society

4. The Special Rapporteur participated in numerous conferences and seminars during the period under review. In September 2011, she took part in a training session on child rights for security forces, organized by the International Bureau for Child Rights and held in Dakar. On 29 September, she delivered a speech in the framework of an event relating to the "Stop sex trafficking of children and young people" campaign organized by ECPAT International in Geneva. In October, she delivered a keynote speech at the Council of Europe Parliamentary Assembly in the framework of a debate on child pornography and child sex tourism. In November, she participated in an expert meeting convened in the framework of a study by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on street children. From 8 to 10 November, she participated in the fifth ECPAT International Assembly, held in Paris.

5. In January 2012, she took part in a dialogue between the special procedures of the Human Rights Council and of the African Commission on Human and Peoples' Rights in Addis Ababa, organized by OHCHR in cooperation with the African Commission on Human and Peoples' Rights and the African Union Commission. In March 2012, she opened the General Assembly of the NGO Group for the Convention on the Rights of the Child, held in Geneva. On 12 April, she participated in the International Day for Street Children, organized by the

Consortium for Street Children and held in London. On 10 and 11 May, she attended a conference on strengthening family and alternative care for children in Africa, held in Dakar and organized by Save the Children. On 29 and 30 May, she participated in the fifth International Policy Conference on the African Child, on the theme of inter-country adoption, organized by the African Child Policy Forum and held in Addis Ababa. In June, she attended an expert workshop aimed at elaborating guiding principles on international solidarity, organized by OHCHR and held in Geneva. On 6 and 7 August, she attended a workshop on human rights and technology at Stanford University, United States of America. From 9 to 11 August, she participated as a lecturer in a summer course on child rights organized by the University of Moncton, Canada.

II. Child participation as a key element in preventing and combating the sale and sexual exploitation of children

A. Introduction

1. Background

6. In her previous report to the General Assembly (A/66/228), the Special Rapporteur stressed the need to establish comprehensive and rights-based child protection systems in order to effectively protect all children, without discrimination, from being sold and sexually exploited. She provided a detailed outline and practical guidance aimed at assisting all stakeholders in establishing such systems.

7. Child participation is a key component of effective child protection systems. Children's perspectives and experiences support efforts to consolidate these systems and uphold a culture of respect for children's rights. Children's views and recommendations enrich the design of policies and the enactment of legislation. Child participation helps to broaden the reach of advocacy and awareness-raising initiatives and empowers children to gain confidence and trust and engage in peer education.

8. Child participation is about each child having the opportunity to express his or her views and to have those views taken into consideration in all matters that directly or indirectly concern him or her, with the objective of influencing decision-making and achieving change. It requires the informed and willing participation of all children, including the most marginalized and those of various ages and abilities. Child participation is an essential principle that cuts across all programmes and policies and must be implemented in all arenas — from homes to Governments and from the local to the international levels.

9. Child participation is closely connected with the right of the child to be heard, as provided for in the Convention on the Rights of the Child. Giving full effect to that right is recognized as challenging owing to the difficulty that many adults have in accepting the capacity of children to understand, communicate and make informed choices during important decision-making processes.

10. Notwithstanding the many challenges involved, including those of a sociocultural and practical nature, the positive impact of child participation has been significant. Evidence has shown the considerable benefits brought about both by

providing the mechanisms for child participation and by empowering children to become active participants in the protection and fulfilment of their rights. Child participation strengthens both programming and advocacy work and makes adults more accountable to children as rights holders.

11. It is essential to involve child victims/survivors of sale and sexual exploitation in prevention and protection efforts because this ensures that strategies and programmes take into account the experience, knowledge and unique concerns of children who have been directly affected. Through their meaningful and safe participation, these children can also enhance their self-confidence, skills, resilience and feeling of empowerment, all of which may contribute to their recovery and reintegration. The empowerment of all at-risk children through high-quality participation must be a pillar of a comprehensive prevention strategy. Ultimately, empowered children will be best placed to guarantee their own protection.

2. Objectives and methodology

12. The present report was developed with the objectives of providing an overview of available child participation practices, mechanisms and guidelines; offering practical guidance on the lessons learned in working with children as partners; and making specific recommendations on how to establish and strengthen child participation within a rights-based comprehensive child protection system.

13. The present report is based on work carried out by the current Special Rapporteur and previous mandate holders, including through country visits, and on reports and studies of United Nations human rights mechanisms and agencies and other national, regional and international organizations.

B. Child participation framework

1. Conceptual and normative framework

14. While the Convention on the Rights of the Child does not explicitly include a right to participation, it contains a cluster of articles considered to be "participation articles". The term "participation" has been adopted by the Committee on the Rights of the Child and the wider child rights community to describe the realization of the rights enshrined in those articles. Article 12 of the Convention states that every child capable of forming views has the right to express those views freely in all matters affecting him or her and that those views must be given due weight in accordance with the child's age and maturity. This is not only a fundamental right, but also a guiding principle of the Convention.[1] Article 5 points out that, when providing direction and guidance in the exercise by children of their rights, parents and other guardians must take into consideration the evolving capacities of children. Articles 13 to 17 further address the child's right to freedom of expression, thought, conscience, religion, association, peaceful assembly, protection of privacy and access to information and material.

[1] See also general comment No. 12, on the right of the child to be heard, of the Committee on the Rights of the Child (CRC/C/GC/12); and Gerison Lansdown, *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* (London, Save the Children, 2011).

15. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography states, in article 8 (1) (c), that the views, needs and concerns of child victims should be represented and considered in proceedings where their personal interests are affected and, in article 9 (2), that the participation of the community and, in particular, children and child victims, should be encouraged in education and training programmes.

16. The Worst Forms of Child Labour Recommendation, 1999 (No. 190), under the auspices of the International Labour Organization, also states that the programmes of action referred to in the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) should be designed and implemented in consultation with, and taking into consideration the views of, children directly affected by the worst forms of child labour (para. 2). The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, requires States to provide assistance to enable the views and concerns of victims of trafficking to be presented and considered at appropriate stages of criminal proceedings against offenders (art. 6 (2) (b)).

17. The Stockholm Declaration and Agenda for Action against Commercial Sexual Exploitation of Children, adopted at the first World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, included a significant commitment to the participation of children and young people. While this commitment was reaffirmed at the second World Congress, held in Yokohama, Japan, from 17 to 20 December 2001, the third World Congress, held in Rio de Janeiro, Brazil, from 25 to 28 November 2008, promoted an even broader agenda on children's civil rights and children's active role as citizens. Child participation was also an essential component of the report of the independent expert for the United Nations study on violence against children (A/61/299) and constitutes one of its overarching recommendations.

18. In addition, numerous regional instruments encourage the participation of children in the development and implementation of State policies, programmes and other initiatives and in the protection of, and provision of support to, child victims/survivors.

2. Key guiding principles and standards

19. Various guiding principles and standards have been developed by United Nations agencies and other international organizations, such as the Practice Standards in Children's Participation produced by Save the Children in 2005 and the Minimum Standards for Consulting with Children developed by the Inter-Agency Working Group on Children's Participation (comprising ECPAT International, Knowing Children, Plan, Save the Children, the United Nations Children's Fund (UNICEF) Regional Office for East Asia and the Pacific, and World Vision Asia Pacific) in 2007. The latter were developed to improve the quality of consultations, maintain consistency and minimize potential abuse and exploitation during participation. They were designed to be applicable in various contexts and to describe the minimum expectations of behaviour by adults and children at consultation events.

20. Child participation mechanisms must operate in compliance with these international human rights principles and standards and ensure:

(a) Institutionalization of permanent and sustainable mechanisms for the participation of children in decision-making processes relating to all matters of their concern;

(b) Allocation of adequate budgets and resources to support meaningful and sustainable child participation;

(c) Presence of effective, professionally trained, qualified and confident adult staff and support personnel;

(d) Establishment of, and adherence to, ethical standards and child rights principles that include transparency and accountability;

(e) Availability of, and access to, well-publicized, gender-sensitive and appropriate information that is suitable for all children (including very young children, children with disabilities, indigenous children and children from ethnic and linguistic minorities and other marginalized groups);

(f) Establishment and maintenance of a safe and child-friendly environment that ensures the protection and safety of children and the enhanced recovery and skill development of any child victim/survivor participating;

(g) Equality of opportunity and guaranteed participation of children from vulnerable, marginalized and at-risk groups, including children with disabilities, children in street situations and children living in extreme poverty, in rural and remote areas or within alternative care settings, making sure to avoid the participation and representation of children from only privileged backgrounds;

(h) Voluntary and informed participation of child representatives;

(i) Empowerment of child-led organizations and peer initiatives to enable children to develop and carry out their activities;

(j) Regular and independent monitoring and evaluation of the quality, sustainability and accountability of mechanisms and practices;

(k) Systematization of children's participation in all monitoring and evaluation activities.

21. In addition, children must be provided with child-friendly and accessible feedback on their participation through immediate and clear statements on the impact and value of their contributions, the decisions that they have taken and the next steps. This enables children to understand the outcome and use of their contributions.

C. Child participation practices

22. Numerous initiatives have been launched by stakeholders throughout the world to secure child participation in preventing and combating the sale and sexual exploitation of children. In the present section, the Special Rapporteur provides a brief overview of practices that have led to specific changes in ways of working with children as partners. Preference was given to documented practices relating specifically to the subject of the present report, bearing in mind geographical

representation. Although these examples are not exhaustive and may need to be adapted to suit particular contexts, many are worth replicating.

1. Child-sensitive and appropriate information

23. In accordance with article 17 of the Convention on the Rights of the Child, a child has the right to gain access to appropriate information and material. Gaining access to information is often the first step in the participation process, given that it allows an informed child to voice his or her opinion. In the context of the sale and sexual exploitation of children, this information is often delicate and must therefore take into consideration, and sometimes challenge, cultural and context-specific sensitivities. It is equally important, targeting the children who are most at risk and hard to reach, to ensure the broad geographical and linguistic reach of information tools and mechanisms. Consideration must also be given to the particular communication needs of children with disabilities.

2. School programmes and helplines

24. Education programmes have been developed in schools and represent a wide-reaching and potentially sustainable method of informing children. From 2008 to 2011, Barnardo's, a charity founded in the United Kingdom of Great Britain and Northern Ireland in 1866 to care for vulnerable children and young people, delivered a preventative education programme on child sexual exploitation intended to improve awareness and understanding of and response to sexual exploitation and to strengthen the confidence and ability of children and young people to resist unwanted sexual experiences. The programme, which included training and awareness-raising sessions, targeted local safeguarding children boards, schools and residential units from 25 London boroughs. In total, it involved 4,723 young people and 820 professionals. According to the final evaluation, published in 2011, half of the children involved demonstrated progress in identifying risk factors and safety strategies.

25. Children at the Nzeve Deaf Children's Centre in Mutare, Zimbabwe, found that an existing manual on sexual and reproductive health education was not particularly user-friendly for hearing-impaired children and did not deal with some of their specific vulnerabilities. Accordingly, the centre worked in collaboration with the children to adapt the manual specifically to their use. After incorporating the changes suggested by the children, the centre took the revised materials back to the children for further feedback. This step was important because the children could see that their suggestions had been incorporated, giving them a sense of ownership of the document and encouraging them to provide further ideas and recommendations. Meanwhile, the process of reviewing the document multiple times helped the children to absorb and retain important information on sexual and reproductive health education.[2]

26. Helplines have been set up as a safety net for children in many countries and should be an essential component of any information-sharing and reporting strategy on violence against and abuse and exploitation of children. These toll-free numbers provide children with information and immediate confidential support and link them with appropriate services. According to data provided by Child Helpline

[2] Catholic Relief Services Zimbabwe, *Child Participation in Education Initiatives* (2007), p. 30.

International, more than 14.5 million children (or adults on behalf of children) contacted helplines around the world in 2008. With the continuously expanding use of information and communications technology, including mobile telephony, text messaging, instant messaging and the Internet, some barriers preventing children from making use of existing helplines are being overcome.

3. Creative arts involving children

27. Another popular, inexpensive and accessible medium to raise awareness and share information is theatre. In Ukraine, a programme for young people known as the "Gender Interactive Theatre", which was developed by the School of Equal Opportunities, uses interactive theatre methods to raise awareness of social issues such as trafficking, HIV/AIDS, drug abuse and violence prevention. Based on peer education through creative arts, it encourages the participation of diverse groups of children as actors and audience. Interactive theatre has become extremely popular with young people in Ukraine and the model has been replicated in Belarus.[3]

28. In Guatemala, peer educators at the Education Programme for Working Children and Adolescents, an institution of some 1,800 students providing education to working children, created a mural to raise awareness. The aim of this microproject was to ensure that young people and adolescents were aware of the dangers of commercial sexual exploitation of children. It provided a fun and interactive way to discuss the sensitive issues of commercial sexual exploitation of children, trafficking of children and HIV/AIDS with the most at-risk young people.[4]

29. At the fourth Arab Civil Society Forum for Children, organized by the Arab Council for Childhood and Development and Save the Children International and held in July 2012 in Beirut, children from Lebanon, Yemen and the West Bank highlighted the importance of children's participation in prevention and protection from child sexual abuse. Child presenters, aged from 14 to 15 years, spoke about their experiences with peer learning and demonstrated with puppets, theatre, animations, songs and skits the tools that they had learned to express themselves.

4. Child-friendly media

30. Print and broadcast information are shared with children in many forms, including leaflets, cards, booklets, posters and television and radio broadcasts. These can form part of specific time-bound campaigns or continuing initiatives to raise awareness of and promote existing services such as helplines. They are produced using age-appropriate language, images, cartoons and attractive designs. In the context of its "ONE in FIVE" campaign to stop sexual violence against children, the Council of Europe created a character named Kiko, who appears in books, television spots and other materials, helping children, parents and carers to prevent, identify and appropriately respond to the sexual abuse of children.[5]

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[3] ECPAT International, *Ensuring Meaningful Child and Youth Participation in the Fight against Commercial and Sexual Exploitation of Children: the ECPAT Experience* (Bangkok, 2007), p. 27.

[4] ECPAT Youth Journal, *Empowering Child Survivors and At-Risk Youth against Commercial Sexual Exploitation* (Bangkok, 2012), p. 9.

[5] See www.coe.int/t/dg3/children/1in5/default_en.asp.

31. Animated short films are an effective and attractive medium to convey difficult messages. One such example is *Two Little Girls*, which was made by the Poppy Project in the United Kingdom in consultation with a group of young Albanian women who were trafficked into the country. It is part of a trafficking prevention and public awareness-raising campaign, aimed at girls and young women in 13 countries in Eastern Europe who are at risk of being trafficked for sexual exploitation. It warns them of the dangers of being persuaded to travel abroad with false promises of employment, only to find themselves sold into commercial sexual exploitation. Other good examples have been produced using the "Animate it" method promoted by Save the Children Sweden, which allows children to design and produce animated films about issues that concern them.

32. In 2005, Al-Jazeera launched a pan-Arab children's channel directed at children between the ages of 7 and 15 years. It shows thematic documentaries on educational topics and debates that allow Arab children to express their views and ideas. Its bilingual and interactive website (www.jcctv.net) also provides a wide range of multimedia and digital content and tools that enable children to upload images and videos and discuss issues of concern with others. In January 2010, a video-on-demand service (www.taalam.tv) was launched by the channel as an educational device to allow students to learn in a more stimulating and interactive way. The service has already reached more than 100,000 students in 178 schools. It contains specific sections on children's rights, including rights against domestic abuse.

5. Child-friendly spaces and forums

33. Children can make their voices heard in various contexts and at various levels, including at the individual level, where they require empowerment to participate in everyday decisions affecting them. Participation can be formal or informal, initiated by children themselves, by adults or by both jointly. It can be permanent or temporary. Examples include children's clubs, youth groups, associations, student councils, youth forums, children's parliaments and blogs.

34. In Mexico, the Mechita Club provides activities for children who are living and working in La Merced market, Mexico City, and are at high risk of exploitation. Through the club, children create and perform in plays, act as spokespersons to raise awareness in their communities and engage in other educational activities. Children aged between 7 and 13 years also produce a monthly bulletin that provides information to the community about their activities and raises awareness of issues related to child rights and the risks of sexual exploitation.[6]

35. The third Mekong Youth Forum on Human Trafficking and Migration was held in Bangkok in October 2010, organized with the support of the Government of Thailand, Save the Children UK, World Vision International, the International Labour Organization and the United Nations Inter-Agency Project on Human Trafficking. It included children from Cambodia, China, the Lao People's Democratic Republic, Thailand and Viet Nam, some of whom were survivors of commercial sexual exploitation. Under the auspices of the Forum, the children participated in national and regional consultations organized to evaluate existing activities focused on combating human trafficking and made recommendations for

[6] ECPAT International, *Ensuring Meaningful Child and Youth Participation*, p. 20.

policy improvements, including in relation to the participation of young people and accountability of policymakers. The recommendations of the Forum were presented at an international meeting to review the progress of the third World Congress against Commercial Sexual Exploitation of Children and Adolescents, organized by ECPAT International and held in Bangkok in October 2010.

36. The "Be-free" programme works under the umbrella of the Bahrain Women Association for Human Development and has since 2009 developed an environment that encourages the participation of children and young people in identifying issues and areas that might lead to risks of abuse and exploitation for them or their peers. It also helps children and teenagers to find practical and effective solutions to and ways to protect themselves from abuse and exploitation.

37. At the international level, UNICEF has a recently modernized blog entitled "Voices of Youth" (http://voicesofyouth.org), which enables young people to learn more about and share their thoughts and opinions on issues affecting their world. Online discussions encompass such social issues as education, environment, violence and conflict, HIV/AIDS, health and human rights.

6. Children's participation in project design and implementation

38. Children have been involved in the development and execution of projects to prevent and combat the sale and sexual exploitation of children around the world.

39. In the Czech Republic, for example, the Ecumenical Network for Youth Action is a partnership of churches, related associations and networks that runs a programme to tackle trafficking, forced prostitution and sexual abuse of children and young people in Eastern and Central Europe. It includes interactive training seminars, prevention programmes and strategies for the establishment of independent homes for young people that are co-managed with children living on the street. The network has also developed specialized peer leadership programmes to promote the full inclusion of young people in efforts to combat commercial sexual exploitation of children. These have been successful in providing an opportunity for young people to become involved, take responsibility and seek alternative lifestyles and opportunities to improve their lives.[7]

40. The youth section of the All-Ukrainian Network against Commercial Sexual Exploitation of Children consists of 25 children and young people. As part of a campaign launched by the Body Shop to stop sex trafficking of children and young people, the section gathered more than 55,000 signatures (half of which were from children) on a petition to change those Ukrainian laws that were not fully compliant with the provisions of the Optional Protocol. Consequently, a comprehensive bill to prohibit commercial sexual exploitation of children was registered in the parliament and presented to the Ombudsman for Children under the President of Ukraine.[8]

41. The "What works for us" project in the United Kingdom is a joint initiative by ECPAT UK, the National Working Group for Sexually Exploited Children and Young People and Barnardo's that was launched in January 2010. It brings together young people from around the country to participate in national consultations involving leading organizations, such as the Child Exploitation and Online

[7] Ibid., p. 26.

[8] ECPAT Youth Journal, *Empowering Child Survivors and At-Risk Youth against Commercial Sexual Exploitation*, pp. 17-19.

Protection Centre (a national law enforcement agency that focuses on tackling the sexual abuse of children), to assess and discuss programmes, policies and services regarding the prevention of and protection of children from sexual exploitation and to help to inform the development of relevant practice and policy. The young people involved have become recognized as a high-level advisory group and have participated actively in the development of relevant practice and policy. They attended a meeting in Parliament in June 2011 to highlight gaps in response to sexual exploitation and presented research findings to the Children's Commissioner for England in September 2011.

42. The Child Protection Alliance in the Gambia has institutionalized the participation of children and young people in its work. They are involved in programme design and implementation, including advocacy and prevention work in relation to commercial sexual exploitation of children. A children's advocacy group, Voice of the Young, is consulted and involved in all decision-making processes within the organization. It is active in mobilizing and building the capacity of children and young people, including through training in child rights and protection issues. It hosts talk shows on issues related to child protection, including commercial sexual exploitation of children, on national radio and television stations. It also organizes a quarterly meeting of young people from diverse groups around the country to discuss issues of concern to children. The final declaration of that meeting is transmitted to the Government. It has also set up 24 clubs in rural schools.

43. The Global Youth Partnership Project against Commercial Sexual Exploitation of Children is aimed at improving the lives of affected children by empowering survivors and those at risk to advocate their own right to be protected. Through leadership training sessions led by young people, peer support programmes, microprojects led by young people and improvements in shelter care services, children learn how to better protect themselves and others while actively lobbying Governments to uphold their commitments to combating the commercial sexual exploitation of children. The psychosocial impact of the initiative is manifested in the participating children's increased resilience, confidence, creativity, self-esteem and social and life skills.[9]

44. In 2009, the International Catholic Child Bureau brought together three of its partners from South and South-East Asia (Reaching the Unreached Trust in India, Aawaaj in Nepal and Community Child Based Organization in Cambodia) to reflect on and learn from their work and experiences in relation to efforts to combat child sexual exploitation. The group met annually and, in 2012, produced a manual drawing on the testimony and experience of children and adult survivors of sexual abuse, along with that of the non-governmental organizations that had supported them. The involvement of children in the project highlighted the best ways to approach survivors of sexual abuse, given that the non-governmental organizations could see which factors had genuinely helped their recovery. The group discovered that relationships of trust, respect and ensuring the dignity of each child were absolutely necessary to improve resilience in survivors of sexual abuse. The

[9] See www.ecpat.net/ypp_global//index.php.

participation of children made it possible to understand the best way for that to be achieved.[10]

7. Child participation and online safety

45. The rapid development of the Internet and new technology has provided new channels through which to raise children's awareness of the subject of sale and sexual exploitation of children. These channels may, however, also be abused and increase the risks of exploitation for children using them.[11] In a study on safe habits in the use of smartphones by Spanish children and adolescents carried out by Orange and the National Institute of Communication Technologies in 2011, it was found that 3.8 per cent of children questioned had received telephone calls or text messages from unknown adults wanting to meet them (indicating possible grooming). Of concern was the fact that children were over seven times more worried about excessive expenditure on telephone bills than about being contacted by a stranger.

46. In Kenya, the Africa representative of the ECPAT International Child and Youth Advisory Committee, in collaboration with other young people, coordinated a campaign entitled "Make-IT-safe", intended to protect children from pornography. The campaign, aimed at raising awareness about violence in cyberspace, involved a petition-signing day that included online signing and distribution of T-shirts and stickers. This stimulated public interest in learning more about the issue and in setting up systems encouraging cybercafe owners to monitor content accessed by children and to ban the viewing of pornography on their premises. The campaign also attracted the attention of police and Government representatives. Following this initial success, young people brought the campaign to other parts of the country, working with cybercafe owners to set up monitoring systems and raising awareness of safe use of the Internet in schools and universities.[12]

47. The "Safer Internet centres" initiative, part of a European Commission programme, works in partnership with panels of young people (children aged from 14 to 17 years) on campaigns, awareness-raising materials and Internet safety.[13] In the Netherlands, for example, Digiraad (http://dedigiraad.nl) is an advisory committee comprising young people who advise the Ministry of Economic Affairs about issues pertaining to Internet safety. They also test information materials to ensure that, as the main target group for these materials, their opinion is taken into account. They post their advice on their website, where other young people can also comment through an online forum.

48. As part of the "Thinkuknow" education initiative by the Child Exploitation and Online Protection Centre in the United Kingdom, a website was created to provide children with age-appropriate information, including games and videos (www.thinkuknow.co.uk). As part of the "Fighting against child exploitation" initiative, young people who were aware of the dangers of grooming and sexual

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[10] International Catholic Child Bureau, *Promoting Resilience for the Prevention of and Recovery from Sexual Abuse and Child Exploitation in Asia* (Barcelona, 2012).

[11] See UNICEF, *Child Safety Online: Global Challenges and Strategies* (Florence, UNICEF Innocenti Research Centre, 2011).

[12] ECPAT International, *Ensuring Meaningful Child and Youth Participation*, p. 17.

[13] See http://ec.europa.eu/information_society/activities/sip/projects/centres/index_en.htm.

exploitation and were willing to help others came together to create a website that uses fun quizzes, games and stories to convey information (www.faceup2it.org).

49. In Australia, the objective of the Youth Advisory Group on Cybersafety,[14] established under the country's cybersafety plan, is to provide the Government with the perspective of young people on cybersafety issues. Membership of the Group in 2012 is expected to expand to some 3,000 individuals aged between 8 and 17 years, from up to 400 schools nationwide. Among other things, the Group's members cooperate with the police to provide updates on online developments affecting children (such as trends and language) and organize awareness-raising activities in schools. Their advice has resulted in the creation of resources, such as the Cybersafety Help Button, launched in 2010, which is intended to give Internet users, in particular children and young people, easy online access to counselling, reporting and information resources on cybersafety issues. An easy guide to socializing online has also been published, providing cybersafety tips for 26 social media sites, search engines and online games, along with general safety tips for Internet usage.

50. The International Youth Advisory Congress, held in London in 2008, brought together more than 140 children aged between 14 and 17 years from 19 countries to develop action-oriented recommendations to Governments, the media, law enforcement agencies, the education sector and the private sector. The participants produced the Children and Young Persons' Global Online Charter, which listed recommendations aimed at making their virtual environments safe.[15]

8. Child participation in judicial proceedings

51. Actions have been taken to guarantee effective child participation in judicial proceedings, including the production of manuals and guidelines (under the auspices of, for example, the United Nations and the Council of Europe),[16] the provision of training and technical advice to facilitate the implementation of such guidelines, the development of child-friendly environments guaranteeing children's safety, protection and confidentiality (including through child-friendly spaces in court), videotape recording to guarantee safety and confidentiality, and child-sensitive reporting mechanisms.

52. The Children's House in Iceland is a specialized institution, operating under the auspices of the Government Agency for Child Protection, which offers a comprehensive set of services in response to actual or potential cases of child sexual abuse, including facilities for child-friendly interviews of children involved in criminal justice processes. It offers multidisciplinary services provided through an integrated approach that prevents repeated interviews and ensures prompt and comprehensive referral of child victims to all relevant services. This has led to an increase in the number of complaints, prosecutions and convictions for acts of sexual violence against children. The Children's House served more than 2,000

[14] See www.dbcde.gov.au/funding_and_programs/cybersafety_plan/youth_advisory_group.

[15] See www.iyac.net/children/index.htm.

[16] These include UNICEF guidelines on the protection of child victims of trafficking; the model law and related commentary on justice in matters involving child victims and witnesses of crime, published by the United Nations Office on Drugs and Crime and UNICEF; and guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and their explanatory memorandum.

children within its first 10 years of operation and its success has led to children's houses being set up in Denmark, Norway and Sweden.[17]

53. In Ethiopia, the Forum for Sustainable Child Empowerment (www.fsc-e.org) runs a rehabilitation and reintegration programme for abused and exploited children. Interventions have included the establishment of child protection units and rescue centres for victims of sexual abuse and exploitation and trafficking, training of police officers, prosecutors and judges, the establishment of child-friendly courts (including setting up closed-circuit television systems for child victims) and the start-up of a coalition of non-governmental organizations and Government departments intended to function as a referral mechanism.

54. Child advocacy centres[18] funded by the Government of Canada provide a coordinated approach to meeting the needs of child victims of or witnesses to crimes. Such centres are intended to minimize system-induced trauma by providing a single, child-friendly setting for children and their families. A child advocacy centre is a community-based programme, with a multidisciplinary team providing comprehensive and child-rights-focused support to victims, including forensic interviewing (a fact-finding mission, performed by someone who is specially trained in the many dynamics of child abuse, to determine whether a child has been abused and to find out the child's reality about what happened to them, using non-leading and age-appropriate questions).

9. Children's participation in public policy development and monitoring

(a) National level

55. Children have been participating in the development of legislation, policies and national action plans. National children's parliaments, established in many parts of the world, have also made it possible for children and young people to engage in political systems and processes and to influence debates related to children's issues in a formal way.

56. In El Salvador, a five-year comprehensive national children and youth policy centred on child rights was developed through dialogue with young people in 262 municipalities and adopted in August 2010. The example set through consultations with children and young people is positive because the process was supported by the involvement of children in the elaboration and planning of policies (see A/HRC/16/57/Add.4).

57. In Yemen, the Children's Parliament has democratically elected representatives from all governorates and includes orphans, children with disabilities and young people belonging to marginalized groups. It regularly meets Government departments and non-governmental organizations. In 2008, it produced a public report on the situation of children in Yemen. In 2010, it carried out a national campaign to illustrate the impact of early marriage on the lives and health of young girls, which has led to a review of Yemeni legislation.[19]

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[17] UNICEF, *Child Trafficking in the Nordic Countries: Rethinking Strategies and National Responses* (Florence, UNICEF Innocenti Research Centre, 2011), p. 29.

[18] See www.justice.gc.ca/eng/pi/pcvi-cpcv/fv.html.

[19] See http://mena.savethechildren.se/MENA/News-and-events/Press-Releases/Saada/Yemen-stories/The-Childrens-Parliament-in-Yemen.

58. In Bangladesh, as part of the "Listen to children's voices" project launched by Save the Children Australia, a national children's task force was formed in all districts to monitor child rights issues nationwide. In addition, the Child Parliament is a platform that allows young people to bring issues to the attention of the Government, non-governmental organizations, donor agencies and civil society. It provides a forum to formulate child-friendly policies based on research.

(b) Regional and international levels

59. Regional consultations with children were integral to the preparatory work for the report of the independent expert for the United Nations study on violence against children (A/61/299). The input of hundreds of children, from 133 countries, was used in the recommendations made in the study. One of the most successful consultations was the Mekong Children's Forum on Human Trafficking, held in October 2004, which was brought about in partnership with the "Voices of children" initiative. All the children involved came from areas in which they were at risk of trafficking, which meant that they had a unique view as to what would be successful and should be done with regard to combating violence. Recommendations such as closing karaoke bars linked to sex services, holding an anti-trafficking day and prohibiting border agents from abusing drugs and alcohol were ideas that adults might not have thought of but were important to the children, who knew the situation on the ground.[20]

60. For the third World Congress against Commercial Sexual Exploitation of Children and Adolescents and its supporting regional preparatory processes, special efforts were made to ensure the participation of children, culminating in the attendance of 282 young people from 96 countries. This included the proactive mobilization of child victims of commercial sexual exploitation and their participation in the core organizing committee and the committee drafting the final outcome document. Similarly, children and young people also participated in the international meeting to review the progress of the third World Congress.

61. In July 2011, an alternative report on the implementation by Nepal of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was prepared by 11 civil society organizations and supported by Save the Children International, Plan Nepal and World Vision International. Focus group discussions and consultations were held with children's organizations with experience in the field, children and victims to gather primary data. A total of 87 children were consulted.

(c) Children involved in research and data collection

62. Child-led research not only provides valuable opportunities for the empowerment of child participants themselves, but also strengthens the research process. Children may have unique access to particular locations, be in a privileged position to judge the accuracy of information and be able to determine the appropriateness of the methodology used, create links with their peers and make the children whom they consult feel at ease.[21]

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[20] Save the Children and International Labour Organization, *Making History: People, Process and Participation — Mekong Children's Forum on Human Trafficking* (Bangkok, 2005).

[21] Ilona Bhattacharya, *Vulnerability of Children Living in the Red Light Areas of Kolkata, India: A Youth-Led Study* (Kolkata, Sanlaap, July 2010), p. 9.

63. Kafa, a local non-governmental organization working on violence and exploitation in Lebanon, carried out research in the aftermath of the July 2006 conflict to assess the prevalence of child sexual abuse, explore knowledge and attitudes and identify barriers to seeking help. More than 1,000 children aged from 9 to 12 years from camps for displaced persons and summer camps participated in the study. In addition, some 250 schoolchildren were involved in five sessions to raise awareness of sexual abuse. Through the Ministry of Social Affairs, the Government indicated its willingness to adopt a national strategy on child sexual abuse — a clear and positive outcome of the project.[22]

64. ECPAT Netherlands has mobilized young people to conduct peer research to investigate the trafficking of children. The young people who conducted the research were also survivors who had an understanding of and access to other young victims of sexual exploitation. The outcome was first-hand information comprising varied experiences and stories that provided significant insight into the nature and extent of the problem. The researchers offered suggestions to improve the services to victims and made specific recommendations on setting up effective prevention and protection systems against trafficking.[23]

65. In 2010, Maiti Nepal, Aparajeyo-Bangladesh and Sanlaap (India), supported by ECPAT International, carried out research led by young people that was specifically focused on children living in vulnerable areas. The purpose of the research was to provide evidence-based data to be used in advocacy to bring about changes in national and local laws, policies and practices. The organizations helped to hold stakeholder consultations, led by young people, where recommendations identified were shared and discussed with policymakers and decision makers.

66. From 2009 to 2012, a project by Save the Children on a civil society for child rights in the Middle East and North Africa aimed to help children and young people to understand child-led data collection and to improve general understanding of the realities facing children. A key outcome of the project was the production of a manual on child-led data collection that was piloted with groups of young people throughout the region.[24]

67. From 2008 to 2010, a regional project to study the mobility of children and young people in West and Central Africa was led by a platform of eight regional child protection agencies, with the assistance of governmental and non-governmental structures gathered within national steering committees. The aim was to document contemporary practices of mobility of children and to develop and promote strategies for child protection on the basis of lessons learned from research and from experience. Children and young people (victims, witnesses, vulnerable children and peers) participated actively in the research and in capitalizing on practices.

10. Child-led organizations and peer initiatives

68. Child-led organizations and associations and peer initiatives provide opportunities for children to develop their skills, receive support from peers and join forces to campaign for their rights.

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[22] Lansdown, *Every Child's Right to be Heard*, p. 114.

[23] ECPAT International, *Ensuring Meaningful Child and Youth Participation*, p. 24.

[24] Available from http://resourcecentre.savethechildren.se/node/6548.

69. Child Assistance for Mobilization and Participation is a Cambodian organization led by young people that works to promote children's rights and improve opportunities for marginalized children through participation. It mobilizes children and young people by forming clubs and village networks, carrying out advocacy with local and national governments and working closely with communities to raise awareness of the need to prevent and address commercial sexual exploitation of children and trafficking of young people. Members have been elected as East Asia and Pacific youth representatives to the ECPAT International Child and Youth Advisory Committee, enabling the organization to bring its grass-roots experiences in the field of children's participation in efforts to combat commercial sexual exploitation of children to the regional and international levels.[25]

70. The African Movement of Working Children and Youth is a movement led and managed by children, present in 25 African countries, with a membership of almost 450,000 working children and young people organized into 2,411 grass-roots groups. Through this movement, activities are carried out at the local, national and regional levels, such as counselling, campaigns and partnerships with other organizations and groups. The primary aim is to build, promote and protect the rights of children. In September 2010, for example, a forum on violence against children was held in Accra, at which participants discussed such issues as physical, psychological and sexual violence. They exchanged experiences and used lessons learned to inspire them to continue to fight their cause. A regional anti-trafficking campaign led by young people was also recently initiated.[26]

71. In South Asia, a peer support programme, part of the Youth Partnership Programme, is run entirely by youth motivators and peer supporters and is self-sustaining. The main objective is to promote awareness of the dangers of commercial sexual exploitation of children and to use direct motivational support to build life and social skills for children most at risk or survivors of sexual exploitation. Peer supporters need to have a positive and empathetic attitude, skills that can benefit the programme and consistent school attendance. Their training and activities include providing direct support to the survivors of sexual abuse and exploitation by building children's confidence, motivation, creativity and life skills to overcome trauma. Educational support on topics such as commercial sexual exploitation of children, trafficking and early marriage is also provided. It is an innovative programme that has proven to be powerful and life-changing, both for the peer supporters themselves and for the children to whom they provide support.[27]

72. In the United Kingdom, a prevention programme on sexual exploitation, administered by Nia (an organization that works towards the prevention of violence against children and the protection of victims of gender-based violence) in partnership with the Children's Society, developed and ran a train-the-trainers programme in which young people were trained to deliver training to professionals and other young people. The aim was to equip young people with information on sexual exploitation and to develop creative ways to engage participants in the learning process. The young people co-facilitated training sessions for professionals,

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[25] ECPAT International, *Ensuring Meaningful Child and Youth Participation*, p. 10.

[26] Moussa Harouna Sambou and Fabrizio Terenzio, "Children on the move, a different voice", 2012. Available from www.maejt.org.

[27] ECPAT Youth Journal, *Empowering Child Survivors and At-Risk Youth against Commercial Sexual Exploitation*, pp. 34-36.

in addition to giving presentations and workshops at various conferences and youth centres. The response from the trainers was unanimously positive; all felt that the experience had boosted their self-esteem, increased their own awareness of sexual exploitation and given them presentation skills. While the young people reportedly experienced rudeness and haughty behaviour from some professionals, they found the majority open and genuinely interested in hearing their viewpoint. The project benefited both the participants and the professionals by showing them another perspective and the unique knowledge of young people.[28]

D. Key lessons learned and challenges

73. Many actions have been taken and mechanisms put in place at various levels to enable children to be appropriately informed, listened to/heard and to express their views and opinions meaningfully. Public and policy decisions informed by such views have been proven to lead to better strategies, services and a more appropriate allocation of resources. Children and young people have shown that, as informed and voluntary participants, they can contribute as active advocates for change and bring innovative ideas to legislation, analysis, research, the drafting of laws, programmes and petitions, among other things. When child participation takes place in accordance with standards and child-rights principles, the active involvement of children has been proven to improve their ownership of the information and to help them to strengthen their resilience and overcome their emotional and physical scars. The examples given above confirm the numerous benefits that derive from giving children a leading role in the development of research, including the ability of children to gain access to particular locations without creating suspicion or fear on the part of the child respondents. The accuracy of the information collected also enhances the quality of specific suggestions and recommendations for improving prevention and protection services. Child-led organizations and peer initiatives empower children to fight for their own protection and that of their peers. The encouraging results notwithstanding, many challenges remain to be overcome, which the Special Rapporteur discusses below.

1. Sustainable and effective child participation mechanisms in compliance with ethical standards and child-rights principles

74. Most initiatives still seem to be time-bound, without processes in place to guarantee their sustainability. The involvement of children in the production and delivery of information needs to be institutionalized to enable them to influence and bring about change in the long term, in line with the evolving technology.

75. The lack of permanent resources to secure the quality and continuity of child participation initiatives is a major concern. Consequently, the processes and structures in place are not fully operational because there are insufficient resources and capacity among adults and children.

76. The need to train all adults involved in ensuring and supporting child participation is a top priority. In addition, professionals require specific skills and

[28] Maddy Coy, Ravi Thiara and Liz Kelly, "Boys think girls are toys?: An evaluation of the Nia project prevention programme on sexual exploitation", Child and Woman Abuse Studies Unit, London Metropolitan University (May 2011). Available from www.cwasu.org/publication_display.asp?type=1&pageid=PAPERS&pagekey=44.

additional training to develop a comprehensive local understanding of the issue of the sale and sexual exploitation of children and suitable responses thereto.

77. There remains a need to systematize ethical child participation in all projects targeting children victims/survivors, child witnesses or children at risk of sale and/or sexual exploitation, in compliance with international child rights principles and standards.

2. Availability of and access to child-sensitive information, and safe and child-friendly environments

78. Age-appropriate and gender-sensitive information is still not widely available, well publicized and accessible to all children in a State, without discrimination of any kind. Special protection should be provided to at-risk children.

79. In many communities, children are expected to be silent in the presence of adults; they are not encouraged to express their views at home, in school or in community gatherings. In many instances, no space is given to children in public affairs.

80. Child-friendly environments in settings such as homes, schools, places of worship, workplaces and institutions for children in alternative care encourage and support children to speak out and have their views taken seriously. There are not enough of these environments.

3. Effectiveness of child safety online

81. Children and young people are often more familiar with and exposed to evolving technology than adults, yet they continue to play a relatively modest role in the development and implementation of strategies to prevent and combat child pornography online.

82. There remain significant disparities between countries regarding the involvement of children and young people in online safety programmes.

4. Equality of opportunity

83. Most child parliaments are led by adults and often involve young people on an ad hoc or token basis. In some cases, they are composed only of children from privileged backgrounds.

84. In structures representing children and young people, such as parliaments, committees and forums, there is a need to guarantee access to and representation of child victims/survivors, in particular from marginalized and at-risk groups, including children with disabilities, children in street situations and those living in extreme poverty, in rural and remote areas or in alternative care settings.

5. Effectiveness of child-friendly participation in judicial proceedings

85. Disparities remain among countries regarding the establishment of a justice system that is sensitive to the specific needs of child victims and witnesses of sexual exploitation and does not result in retraumatization and stigmatization: some domestic legislation continues to place legal liability on children under the age of 18 years if they are engaged in prostitution, violating international standards.

86. There is a need to strengthen child-sensitive hearing/listening environments, in which the child can express himself or herself and in which well-trained professionals, whose skills are regularly updated, can hear/listen to the child and guarantee his or her best interest.

6. Empowerment of child-led and peer initiatives

87. Most research continues to be initiated and led by adults, involving children as providers of information but only rarely as researchers owing to a range of practical and ethical issues.

88. The recommendations and results of child-led research are not systematically taken into consideration and followed up on by the relevant institutions.

89. Child-led organizations and peer initiatives need to be strengthened through the provision of high-quality support and training to peer educators, not only to identify target groups and formulate research questions and methodologies but also to discuss and identify child protection risks related to the research.

7. Child participation in developing and monitoring child protection projects and policies

90. In many countries, children are not seen as social and political actors. Adults do not think that it is appropriate or beneficial to share information or power with children and to involve them in politics.

91. The involvement of children in projects and in the development of policies varies in terms of the stage at which they become involved and the nature of their input. Children need to be involved in projects as early as possible and during the entire process, from needs assessment to evaluation and monitoring.

92. The provision of accessible and child-friendly feedback to children on their participation is not institutionalized.

8. Monitoring of child participation

93. Child participation processes and mechanisms put in place are not subject to regular and independent monitoring and evaluation in order to ensure respect for international standards and enhance the effectiveness and positive impact of those mechanisms.[29]

94. Some examples mentioned above have benefited from evaluations or documented processes or projects. Efforts to measure and document the impact of child participation initiatives in the prevention and combating of the sale and sexual exploitation of children remain insufficient, however.

[29] Save the Children, UNICEF, Plan and World Vision are currently piloting a global inter-agency conceptual framework for monitoring and evaluating children's participation. See www.crin.org/resources/infoDetail.asp?ID=25809&flag=report.

III. Conclusions and recommendations

A. Conclusions

95. **Child participation is critical to the development of any national strategy based on child rights that is designed to prevent the sale and sexual exploitation of children and ensure their protection, recovery and reintegration. Child participation helps to widen the outreach of advocacy and awareness-raising initiatives and empowers children to gain confidence and trust and promote peer education about the harm caused by sale and sexual exploitation. Children's perspectives and experiences contribute to consolidating effective child protection systems and upholding a culture of respect for children's rights. Children's views and recommendations enrich the design of policies and the enactment of legislation.**

96. **To prevent and combat the sale and sexual exploitation of children, child participation activities have increased, with children becoming involved in campaigns and lobbying, advocacy, research, peer-to-peer initiatives, child-led organizations, project design and management, policymaking, decisions, evaluations, information, awareness-raising, use of the media (including the Internet) and conference participation. In addition, several norms and recommendations have been adopted and many guidelines and tools developed to strengthen child participation.**

97. **Child participation continues, however, to be used for a wide range of activities (because of a lack of common definition) and is limited in scope (dominated by one-off processes). There is no clear set of commitments and actions for children's rights so that children are properly informed and listened to/heard and can have their views taken into consideration. Consequently, child participation has not been translated into practical approaches that make genuine differences to the lives of many children (in particular younger and disadvantaged children), who remain excluded from public decision-making and disempowered. This in turn further exacerbates the risks of abuse, exploitation and marginalization in society.**

98. **In addition, child participation continues to face challenges such as cultural barriers and adult resistance, lack of resources and capacity (given that promoting children's participation requires a wide range of skills and experience) and sustainable support.**

99. **To overcome these challenges, child participation has to be considered a core and cross-cutting component of comprehensive and rights-based child protection systems, so as to guarantee the effective protection of every child from sale and sexual exploitation. It requires:**

(a) **A paradigm shift away from perceiving children as passive recipients towards acknowledging and supporting them as active rights holders and citizens who are entitled to be heard and to have their views taken seriously. This requires an attitudinal shift in adults and capacity-building for children themselves;**

(b) **More strategic initiatives on child participation with long-term goals, rather than ad hoc and short-term projects based on the involvement of children;**

(c) **Focus on children as citizens and on the building of resilience;**

(d) **A continuous child participation process, including informing, hearing/listening, consulting, taking into consideration views and opinions, empowering child-led and peer initiatives, and involving children in policymaking and decision-making, all in compliance with and showing commitment to international standards and guidelines.**

B. Recommendations

100. **Child participation must be institutionalized and included as a process. It must be a core and cross-cutting component of a comprehensive, context-specific, rights-based child protection system in compliance with international standards and norms (see A/65/221, para. 115).**

National level

101. **A mapping and assessment of child participation must be carried out, in accordance with the relevant principles and standards, with a view to identifying the remaining achievements and gaps. The mapping process must involve all the principal stakeholders in child protection (public and private sectors, national human rights institutions, non-governmental organizations), including children and communities, with a view to ensuring effective and sustainable child participation. If necessary, legislative changes should be introduced to protect and promote child participation rights in order:**

(a) **To establish a legal framework in compliance with international standards: legislation must ensure that children can express their views freely in all matters affecting them, in general terms and in particular settings, such as within the family, education, alternative care, health care, custody and in all judicial and administrative proceedings affecting them; ..** ,

(b) **To establish a justice system that is sensitive to the specific needs of child victims of and witnesses to sexual exploitation and does not result in retraumatization and stigmatization, guaranteeing that children are properly informed about issues such as the ways in which interviews are conducted, the existing support mechanisms in place for children submitting a complaint and/or participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures and legal services, the possibility of receiving reparation and the provisions for appeal;**

(c) **To develop, implement and monitor child participation strategies and mechanisms (see A/66/228);**

(d) **To ensure the availability of and access to child-sensitive and appropriate information (in local languages and various formats) that is suitable for children with disabilities and children of diverse ages and at various stages of maturity, including the very young, and to involve children in producing and delivering such material;**

(e) To establish and maintain a child-friendly and enabling environment that ensures protection and safety, and to design and implement awareness-raising programmes targeting adults (parents, caregivers, professionals and policymakers) with a view to changing social perceptions and promoting child participation in families, schools, institutions, communities and policymaking spaces;

(f) To provide active and sustainable support to children, including sufficient resources, qualified and confident staff and efficient training and support, so as to ensure their full participation and understanding;

(g) To ensure the enhanced recovery and skill development of victims who are part of the child participation process;

(h) To ensure that there are well-trained professionals, whose skills are regularly updated, who are willing and able to support and listen to children;

(i) To strengthen the involvement of children and young people in child safety online by providing child-sensitive information and peer-to-peer support with regard to reporting new or recurrent threats of exploitation through the Internet;

(j) To establish systemic mechanisms through which to influence public decisions at all levels, guaranteeing the participation of children without discrimination of any kind in parliaments, councils, forums and consultations;

(k) To ensure adherence to ethical standards and child rights, including transparency and accountability;

(l) To provide children with accessible feedback on their participation through immediate and clear statements on the impact and value of their contributions, the decisions that they have taken and steps forward;

(m) To provide appropriate and sustainable support to child-led organizations and peer initiatives;

(n) To ensure regular and independent monitoring of the quality, permanence, accountability and follow-up activities of child participation mechanisms, practices and activities: children's participation must be systematized in all monitoring activities and children must have the opportunity to provide feedback on processes and make suggestions for possible improvements, thus ensuring that their views are taken into consideration.

Regional and international levels

102. While some States have demonstrated a strong commitment to improving child participation in preventing and combating the sale and sexual exploitation of children, their capacity to act is sometimes hampered by political instability and limited resources. In such cases, it is essential to provide sustainable support through strong and coordinated cooperation at the regional and international levels.

103. Because of the transnational and complex dimension of the sale and sexual exploitation of children, strong cooperation and coordination requires the full participation of all stakeholders, including children and young people, at the regional and international levels. This can be brought about by:

(a) Assessing child participation processes, mechanisms and practices and drawing on promising practices with a view to capitalizing on them and increasing their impact;

(b) Implementing the recommendation of the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents regarding the establishment by 2013 of a comprehensive framework to harmonize and facilitate coordination and cooperation at the national, regional and international levels among all relevant stakeholders, including child-led organizations, to enable and support specific actions to prevent and stop the sexual exploitation of children and adolescents;

(c) If necessary, extending technical assistance to States by United Nations agencies and human rights mechanisms, with a view to providing support for child participation as a key and cross-cutting component of comprehensive and rights-based child protection systems.

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Item 70 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Situation of human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, in accordance with Assembly resolution 66/164.

* A/67/150.

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Report of the Special Rapporteur on the situation of human rights defenders

Summary

In the present report, the fifth submitted to the General Assembly by the current Special Rapporteur on the situation of human rights defenders, the focus is on the use of legislation to regulate the activities of human rights defenders. The Special Rapporteur consolidates her other reports on various types of legislation. She takes into account principles developed by other special rapporteurs on issues relevant to the present report and provides recommendations and guidance on how to ensure that various types of national legislation contribute to a conducive working environment for human rights defenders.

In section I, the Special Rapporteur provides the background to the present report. In section II, she sets out the international legal framework relating to legislation regulating the activities of defenders, including the basic principles that should inform the development and application of relevant legislation.

In section III, she reviews the types of legislation affecting the work of human rights defenders, including anti-terrorism and other legislation relating to national security; legislation relating to public morals; legislation governing the registration, functioning and funding of associations; access to information legislation and official-secret legislation; defamation and blasphemy legislation; and legislation regulating Internet access.

In section IV, she sets out minimum standards to be respected in the development of legislation and procedural safeguards to be followed in the application of legislation. In section V, she provides conclusions and makes recommendations to States and other stakeholders.

Contents

		Page
I.	Introduction	4
II.	International legal framework	5
III.	Types of legislation regulating the activities of human rights defenders	6
	A. Anti-terrorism and other legislation relating to national security	6
	B. Legislation relating to public morals	9
	C. Legislation governing the registration, functioning and funding of associations	12
	D. Access to information legislation and official-secret legislation	14
	E. Defamation and blasphemy legislation	15
	F. Legislation regulating Internet access	16
IV.	Minimum standards regarding legislation	17
	A. Principle of legality	17
	B. Principles of necessity and proportionality	18
	C. Limited nature of derogations	19
	D. Principle of non-discrimination	20
	E. Constitutional safeguards	20
	F. Procedural safeguards	20
V.	Conclusions and recommendations	21

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 16/5 and General Assembly resolution 66/164.

2. In the present report, the Special Rapporteur focuses on the use of legislation to regulate the activities of human rights defenders, in the light of considerable concern about legislation being adopted and/or enforced in ways that restrict the activities of human rights defenders in various countries, across continents and in diverse political and social contexts.

3. The present report is, in many ways, an update of the report submitted to the General Assembly in 2003 by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani (A/58/380, annex). In paragraph 13 of that report, the Special Representative considered the effects of security legislation on the working context of human rights defenders. She noted that some States had, in the past two years, introduced new and broad security legislation as part of a more recent declared commitment to strengthen security and combat terrorism. She went on to say that, while the full impact of very new legislation was yet to be seen, some cases then emerging showed a great potential for those very broad security provisions to be used against human rights defenders in the future. The Special Rapporteur is of the view that the time to assess how such legislative developments affect the work of human rights defenders is more than ripe.

4. Since 2003, the Special Rapporteur has in several reports focused on legislative developments in specific areas. In two reports (A/59/401 and A/64/226), she addressed the right to freedom of association. In another two reports (A/61/312 and A/62/225), she considered the right to freedom of peaceful assembly. In her report to the General Assembly in 2011 (A/66/203), she provided an overview of the rights enshrined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders) and the most common restrictions reported to her with regard to the exercise of those rights.

5. A number of important developments have taken place since 2003. In 2005, the Commission on Human Rights established the mandate of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, which was renewed by the Human Rights Council in 2010. Also in 2010, the Council created the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and decided that, in his or her first report, the Special Rapporteur should assess best practices in relation to those rights. His first report was issued in May 2012 (A/HRC/20/27). In addition, reports by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/66/290 and A/HRC/20/17) and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/66/254) have dealt with issues relating to the use of legislation and are relevant to the working context of human rights defenders.

6. In the light of these developments, the Special Rapporteur considers it necessary to consolidate the various observations and recommendations developed over the past 10 years, to assess how various types of legislation regulate and restrict the activities of human rights defenders and to provide specific

recommendations to States and other stakeholders in this regard, including on how State actors can ensure a conducive working environment for human rights defenders.

7. In addition to information regularly received by the Special Rapporteur, a questionnaire was sent to Member States and civil society organizations seeking specific information about the use of legislation to regulate the activities of human rights defenders. The Special Rapporteur expresses thanks to those States and non-governmental organizations that responded. The responses are available in full on the section on the work of the Special Rapporteur of the website of the Office of the United Nations High Commissioner for Human Rights (www2.ohchr.org/english/issues/defenders/index.htm).

II. International legal framework

8. The Declaration on Human Rights Defenders contains provisions protecting defenders against arbitrary use of legislation to restrict their activities. Notably, article 2 (2) holds that each State is to adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the Declaration are effectively guaranteed.

9. The principle of non-discrimination is explicitly enshrined in the Declaration in its third preambular paragraph and its article 8 (1). This principle is also endorsed in, among others, article 2 of the Universal Declaration of Human Rights, articles 2 and 26 of the International Covenant on Civil and Political Rights and article 2 (2) of the International Covenant on Economic, Social and Cultural Rights. The Special Rapporteur wishes to emphasize that this principle is fundamental to the rule of law and, accordingly, to the use of legislation to regulate the activities of human rights defenders. It is closely linked to the right to equality before the law, as provided for in article 7 of the Universal Declaration of Human Rights and articles 16 and 26 of the International Covenant on Civil and Political Rights.

10. Under the Declaration on Human Rights Defenders, everyone is entitled to protection under national law in peacefully opposing or reacting against human rights violations and abuses. Pursuant to article 12 (2), States are to take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation or de facto or de jure adverse discrimination. Through their legislation and the application of national law, States are required to protect individuals and associations acting to defend human rights.

11. Articles 3 and 17 of the Declaration provide that national legislative standards should be in compliance with the international human rights obligations of the State. The Special Rapporteur wishes to emphasize that any restrictions on the rights contained in the Declaration must be in accordance with applicable international obligations and determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society, pursuant to article 17 of the Declaration.

III. Types of legislation regulating the activities of human rights defenders

12. In the present section, the Special Rapporteur reviews the types of legislation that are deemed to affect the activities of human rights defenders. For each type of legislation, she elaborates upon restrictions observed, addressing both the provisions of the legislation in question and its application.

A. Anti-terrorism and other legislation relating to national security

13. As noted in the introduction to the present report, the Special Representative of the Secretary-General on Human Rights Defenders expressed deep concern about the impact of security legislation on the activities of defenders in her 2003 report to the General Assembly. She was concerned that the broad provisions contained in many of the newly adopted pieces of legislation enacted since 11 September 2001 gave wide discretionary powers to those enforcing the laws and could potentially be used to quell dissenting views critical of the Government (A/58/380, paras. 11 and 12).

14. Information received by the Special Rapporteur indicates that the concerns expressed have been warranted. Human rights defenders have been detained, arrested, prosecuted, convicted, sentenced and harassed by Governments under the guise of the enforcement of anti-terrorism legislation and other legislation relating to national security. In the past few years, defenders exercising their rights to freedom of expression, freedom of association and, to some extent, freedom of peaceful assembly have been at particular risk.

15. In some instances, the provisions outlined in anti-terrorism legislation are so broad that any peaceful act expressing views of dissent would fall under the definition of a terrorist act, or an act facilitating, supporting or promoting terrorism. In practice, such provisions severely restrict the right of individuals and associations to assemble peacefully to protest or raise awareness of a human rights issue. The interruption of traffic or the provision of public services, which in some cases constitute offences under such legislation, can thus be interpreted as acts of terrorism if they result from the holding of a peaceful demonstration in defence of human rights. This is a clear violation of article 15 of the International Covenant on Civil and Political Rights, which requires the principle of legal certainty about what constitutes a crime to be respected.

16. Furthermore, overly broad provisions in anti-terrorism legislation severely curtail freedom of opinion and expression. The Special Rapporteur has been informed of a number of cases in which human rights defenders have been convicted on terrorism charges, notwithstanding the fact that the evidence presented has been limited to articles, blog entries and/or tweets in which the defenders in question have called for reforms in favour of human rights.

17. In this connection, the Special Rapporteur wishes to reiterate the criteria for defining terrorism established by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. In his 2006 report to the Commission on Human Rights (E/CN.4/2006/98), the Special Rapporteur emphasizes that the specificity of terrorist crimes is usually defined by

the presence of the following two cumulative conditions, noting that it is only when the two conditions are fulfilled that an act may be criminalized as terrorism:

(a) The means used, which can be described as deadly, or otherwise serious, violence against members of the general population or segments of it, or the taking of hostages;

(b) The intent, which is to cause fear among the population or to compel the Government or an international organization to do or to refrain from doing something, usually in the advancement of a political, religious or ideological cause.

18. The Special Rapporteur urges States to ensure that their anti-terrorism legislation is strictly in accordance with the above criteria. Once these criteria are met, human rights defenders will be in a much better position to conduct their activities without risk of State persecution under anti-terrorism legislation.

19. With regard to other legislation pertaining to public security and public order, the Special Rapporteur has observed developments that have adversely affected the working conditions of human rights defenders. These relate, in particular, to defenders' right to freedom of peaceful assembly.

20. The Special Rapporteur has been informed of such legislation being applied in countries to prevent democracy activists and members of the opposition from holding public assemblies. The grounds for justifying such bans are often unclear in the laws themselves, given that they tend to be limited to formulations such as "to avoid public disorder" or "to ensure that public services are not interrupted", without defining what amounts to "public disorder" or "interruption of public services". Such broad formulations provide grounds for applying the laws in question in an arbitrary and/or discriminatory manner. For example, supporters of the Government have not encountered the same restrictions as democracy activists and members of the opposition when organizing assemblies. Furthermore, in many cases, legislation on this issue provides authorities with wide-ranging powers to impose and enforce bans on assemblies for specific or even unlimited periods and in specific geographic locations.

21. With regard to States practising a regime of authorization for public assemblies, the Special Rapporteur continues to receive reports that such authorizations are denied to human rights defenders intending to raise awareness of human rights or protest against human rights violations. In other cases, assemblies have been permitted to go ahead, but not in the places requested. The Special Rapporteur recognizes the need for States to be notified of assemblies to ensure the safety of participants and surroundings. She shares the position of the Special Rapporteur on the rights to freedom of peaceful assembly and of association that a regime of notification gives the authorities sufficient notice and that this is the international standard by which States should abide in order to respect the right to assemble peacefully (A/HRC/20/27, para. 28). Nonetheless, the Government should ensure that spontaneous assemblies are permitted to take place and that protesters are able to voice their concerns to their target audience. Referring authorized assemblies to geographic locations other than those designated by the organizers would constitute a limitation on freedom of peaceful assembly.

22. Lastly, excessive use of force by law enforcement officers continues to pose a serious problem during public assemblies. States should ensure that the legal framework contains effective and non-discriminatory provisions governing

overs'ght and accountability of officials, especially with regard to their response to public demonstrations and displays of dissent. Any reported excessive use of force in the context of public assemblies should be investigated and prosecuted in a prompt, impartial and independent manner in order to hold perpetrators to account. Beyond this, the Special Rapporteur reiterates the position of the Special Rapporteur on the rights to freedom of peaceful assembly and of association that States have a positive obligation to actively protect peaceful assemblies. This obligation implies a responsibility to protect participants from individuals and groups aiming to disrupt or disperse such assemblies (ibid., paras. 33-38). Such an obligation should be enshrined in the applicable legislation.

23. The Special Rapporteur strongly encourages States to implement the recommendations made by the Special Representative in her 2006 report to the General Assembly (A/61/312) and by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in his recent report to the Human Rights Council (A/HRC/20/27). This is crucial to ensuring that legislation relating to public order and security fully respects and protects the right to assemble peacefully.

24. The right to freedom of opinion and expression is also seriously compromised in a number of countries under legislation relating to national security and under the criminal code. With the growing prominence of social media and other online communication tools, States have sought to regulate these, often with detrimental consequences for the activities of defenders. Provisions that criminalize the publication of articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative co.. equences for the financial climate of the country are overly broad and restrictive. Not only do such provisions limit the ability of human rights defenders to express their opinion about human rights issues, they also make it difficult for defenders to know what is acceptable under the law and hence lead to self-censorship.

25. Arrest, detention and prosecution procedures under anti-terrorism and other legislation related to national security tend to limit access to persons prosecuted ·der such legislation and to information justifying their arrest. Applicable legislation typically also allows a person to be detained for an extended period without having formal charges brought against him or her. Access to a lawyer might be restricted or not allowed at all. This has serious implications for human rights defenders providing legal assistance and working to monitor prisons and detention facilities, given that they are often unable to see their clients or verify their detention conditions. The Special Rapporteur recommends that States allow civil society, community-based groups and the national human rights institution, if such an entity exists, access to persons detained under such legislation.

26. The Special Rapporteur expresses dismay about reports received that defenders who provide legal assistance to persons detained and charged under legislation relating to national security have in some cases been themselves arrested and charged for discharging their functions. There have also been cases in which lawyers have lost their licences because they have defended individuals prosecuted under such legislation. Human rights defenders have the right to provide legal assistance according to article 9 (3) (c) of the Declaration on Human Rights Defenders. Under principle 16 of the Basic Principles on the Role of Lawyers,

adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, Governments have a duty to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and that they do not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. The Special Rapporteur commends those States that have enacted legislative safeguards for legal representatives, typically as part of their legislation relating to equality and non-discrimination. She considers this good practice in ensuring that defenders are not subjected to judicial harassment because they have provided legal assistance.

27. There is a continued risk that the limitations placed on legal proceedings through many pieces of legislation relating to national security may jeopardize procedural safeguards, including the right of access to a lawyer, the maximum period of pre-charge detention and the right to habeas corpus. In addition to placing constraints on defenders providing legal assistance to persons detained in this context, the Special Rapporteur continues to receive reports of individuals detained under legislation relating to national security for having conducted peaceful activities in defence of human rights.

28. In this context, the Special Rapporteur wishes to emphasize that the Human Rights Committee, in paragraph 7 of its general comment No. 29, on states of emergency, found the right to a fair trial to be a non-derogable right to the extent that guarantees of a fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. The principles of legality and the rule of law, which, according to the Human Rights Committee in paragraph 6 of its general comment No. 32, on article 14 of the International Covenant on Civil and Political Rights, are non-derogable under the Covenant, require procedural safeguards to be respected for persons tried under legislation relating to national security. The Special Rapporteur therefore urges States to abide by those principles and also to ensure that the principles elaborated by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/63/223, paras. 31-42) are respected when trying human rights defenders or their clients under legislation relating to national security.

B. Legislation relating to public morals

29. Penal codes in many States contain articles whose declared objective is to preserve public morals and cohesion, with punishments ranging from fines to years of imprisonment and, in some cases, even the death penalty. In recent years, various pieces of legislation have been enacted to bring about further restrictions in the name of public morals, notably with regard to homosexuality, access to contraceptive methods, abortion, cross-dressing and gender reassignment surgery, and the provision of information regarding sexuality and sexual and reproductive health through formal or non-formal education. Such legislation has considerable implications for human rights defenders working to combat discrimination, on issues relating to sexual orientation and gender identity, and on sexual and reproductive rights.

30. The situation of defenders working on the promotion and protection of human rights of lesbian, gay, bisexual and transgender persons continues to be volatile, given that same-sex relations between consenting adults are currently criminalized in more than 75 countries worldwide.[1] In recent years, there have been legislative moves in several countries that have further curbed the activities of defenders working on these issues. Such laws typically make it a crime to operate associations working to defend lesbian, gay, bisexual and transgender rights and often contain vaguely worded provisions criminalizing individuals who promote homosexuality or facilitate, condone or even simply witness same-sex relationships. Besides the purported justification of preserving public morals, some of these laws expressly forbid promotion of homosexuality among minors. Such measures link homosexuality to paedophilia, which are two completely unrelated phenomena. This stigmatizes lesbian, gay, bisexual and transgender people and considerably discredits the work of defenders.

31. Such legislation has a profound and deteriorating effect on the fundamental freedoms of lesbian, gay, bisexual and transgender human rights defenders, in addition to non-governmental organizations and health workers engaged in HIV prevention and providing care for HIV patients. The right to freedom of association is severely compromised by such legislation, forcing lesbian, gay, bisexual and transgender associations to operate clandestinely or to cease operations altogether.

32. With regard to freedom of expression, these laws have an equally detrimental effect, given that publishing an article or expressing an opinion in favour of equal rights for lesbian, gay, bisexual and transgender people may expose someone to criminal prosecution. This leads to self-censorship among defenders working on issues relating to sexual orientation and gender identity.

33. The right to freedom of peaceful assembly faces considerable limitations under the laws in question. In countries practising a regime of authorization for public assemblies, defenders seeking to organize public meetings, marches and demonstrations in favour of equal rights for lesbian, gay, bisexual and transgender people, or to hold pride marches and festivals, are routinely denied permission to hold such events. Reasons cited include the need to uphold public morals and the risk of counter-protests. Human rights defenders who have defied such bans on public assemblies have, in many cases, been arrested and, in some cases, convicted under the applicable legislation relating to preservation of public morals. The Special Rapporteur wishes to stress that, on the basis of the principle of non-discrimination, these justifications are insufficient to prevent such assemblies from taking place. If security risks are involved, it is the duty of the State to provide protection to those exercising their right to assemble peacefully, pursuant to article 12 (2) of the Declaration on Human Rights Defenders.

34. It should also be noted that, in some countries, such legislation currently exists in draft form only. In some cases, legislation has been pending in parliament for several years. In the Special Rapporteur's view, however, even in draft form such

[1] As laws are often vaguely worded, it can be difficult to determine whether same-sex relationships constitute an offence. In its report for 2012, *State-Sponsored Homophobia: A World Survey of Laws Criminalising Same-Sex Acts between Consenting Adults*, the International Lesbian, Gay, Bisexual, Trans and Intersex Association puts the figure at 78. According to the United Nations High Commissioner for Human Rights, same-sex relationships are criminalized in 76 countries (A/HRC/19/41, para. 40).

legislation risks having a chilling effect on the situation of human rights defenders working on sexual orientation and gender identity issues. The same applies in cases in which legislation is in place but has not been used for several years. Given that this situation continues to negatively affect the work of human rights defenders, the Special Rapporteur recommends that such laws be repealed.

35. The Special Rapporteur emphasizes that the Human Rights Committee has found adult consensual sexual activity in private to be part of a person's privacy, which is protected under article 17 of the International Covenant on Civil and Political Rights (CCPR/C/50/D/488/1992, para. 8.2). Laws criminalizing consensual homosexual acts conducted in private violate a person's rights to privacy and to freedom from discrimination on the basis of sexual orientation and gender identity, in breach of applicable international human rights law (A/HRC/19/41, para. 41). Defenders working on these issues are advocating human rights standards that are internationally recognized. States should therefore ensure that defenders working to promote lesbian, gay, bisexual and transgender rights can do so in a conducive and open environment without fear of persecution. Given that it is the right of human rights defenders to develop and discuss new human rights ideas and principles and to advocate their acceptance under article 7 of the Declaration on Human Rights Defenders, it is the responsibility of the State to ensure that its legislation relating to public morals caters to this right and does not compromise the rights of defenders to freedom of expression, freedom of association and freedom of peaceful assembly.

36. Defenders of sexual and reproductive rights also experience constraints resulting from legislation seeking to preserve public morals. Associations promoting such rights have faced restrictions for having handed out information about abortion and referred women to appropriate medical facilities. In many cases, lawsuits have been brought by individuals, organizations and State actors, claiming that such activities are against the law. Medical and health-care professionals have faced similar actions because they have discharged their functions. The Special Rapporteur has observed that this has also taken place in countries in which sexual and reproductive rights, including the right to abortion, are guaranteed in the national legal framework. This is particularly distressing because, as noted by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, women are the main receivers of these services and by being denied access to them they face discrimination and disempowerment (A/66/254, paras. 16 and 17).

37. Sexual and reproductive rights defenders thus play a significant role in ensuring respect for women's human rights. Such activities should not be subject to criminal sanctions. Furthermore, States with a legal framework guaranteeing sexual and reproductive rights need to ensure that such legislation is enforced without discrimination. Judicial harassment against sexual and reproductive rights defenders should not be tolerated, and judges and prosecutors have a key role in this regard. The Special Rapporteur also wishes to emphasize that medical and health-care professionals are protected under article 11 of the Declaration on Human Rights Defenders, according to which everyone has the right to exercise his or her occupation or profession, in compliance with relevant national and international standards of occupational and professional conduct or ethics, including human rights standards.

38. The role of human rights defenders in disseminating information about sexual and reproductive rights, whether as part of State institutions set up for this purpose, through non-governmental organizations or through the formal education system, needs to be clearly defined in legislation relating to public morals to ensure that such activities are not criminalized. Defenders who provide evidence-based sexual and reproductive health information and education should in no circumstances face criminal sanctions, in line with article 6 (b) of the Declaration on Human Rights Defenders (see also A/66/254, para. 65).

C. Legislation governing the registration, functioning and funding of associations

39. Freedom of association is a fundamental right protected under article 5 (b) of the Declaration on Human Rights Defenders, in addition to numerous other international instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The ability of human rights defenders to associate under national legislation is of utmost importance, underscored by the fact that most provisions in the Declaration on Human Rights Defenders emphasize the rights of human rights defenders to engage in activities individually and in association with others (arts. 5-9, 11-13 and 17).

40. As noted in the introduction to the present report, the Special Rapporteur has in two previous reports focused on the issue of freedom of association (A/59/401 and A/64/226). The Special Rapporteur on the rights to freedom of peaceful assembly and of association issued an extensive report to the Human Rights Council in 2012 that contained best practices relating to, among other things, the right to freedom of association (A/HRC/20/27, paras. 51-76). Accordingly, the Special Rapporteur deems it unnecessary to further elaborate on the issue herein. She notes, however, that the recommendations made in the reports are far from being fully implemented. In fact, it appears that recent legislative developments in various countries are further restricting the right to associate freely. In the following section, the Special Rapporteur provides observations in this regard and assesses how the latest developments correspond to provisions outlined in the Declaration on Human Rights Defenders and other relevant international human rights instruments.

41. Information received by the Special Rapporteur indicates that defenders who operate individually or as part of associations that are not registered with the Government are criminalized in several countries. Generally, such activities are punishable under the penal code or the law on associations. They are, in some cases, linked to national security or public order, to which associations, in vaguely worded terms, are deemed to pose a threat. In most cases, however, the penal code or the law on associations forbids activities by associations that are not registered with the authorities and imposes penalties ranging from fines to prison sentences and, in one instance, death.

42. The Special Rapporteur has previously argued that the insistence by a Government that informal groups must register reflects an intention to control their activities and deter groups that are critical of the Government from expressing themselves (A/64/226, para. 60). The Special Rapporteur calls upon States to repeal laws criminalizing unregistered associations working towards the realization of human rights. It should be up to the associations themselves to decide whether they

wish to register in order to benefit from the advantages of being a registered association.

43. The Special Rapporteur has previously recommended that States apply a regime of notification rather than a regime of authorization (ibid., para. 59). It should suffice that associations wishing to register with the authorities present a declaration or notification to the applicable Government entity.

44. The Special Rapporteur is concerned that, through new laws that have recently been passed or are under discussion, Governments are increasingly seeking to restrict the thematic areas upon which associations are permitted to work. Examples include prohibition from engaging in political activities, from defending political rights and from including human rights in the association's objectives. In the Special Rapporteur's view, such provisions are contrary to the spirit of human rights, notably the principles of indivisibility, interconnectedness and interdependence, which emphasize that all human rights are equally important and cannot be separated. Furthermore, they violate the right of human rights defenders to non-discrimination. The Special Rapporteur urges the States in question to remove such registration criteria from their legal framework.

45. Submissions for registration of associations need to be assessed in a timely and independent manner. The body responsible for dealing with associations should be independent of the Government. It should be set up in close consultation with human rights defenders, including independent members of civil society, who should also play a significant part in the assessment of the submissions. As argued by the Special Rapporteur on the rights to freedom of peaceful assembly and association, legislation should stipulate the acceptable time frame for assessing a submission and, if this time frame is not respected by the responsible body, associations should be assumed to be operating legally (A/HRC/20/27, para. 60).

46. Another development in recent legislation is that the authorities are being granted extensive powers to supervise the activities of associations. In many cases, additional reporting requirements are imposed on associations in order for them to retain their licence. In the most extreme cases, the Government is authorized by law to place associations under surveillance, to force them to take management decisions and to demand any documents in an association's possession, without prior notice. The Special Rapporteur believes that such provisions amount to a serious infringement of the right to freedom of association. She reiterates the recommendation by the Special Representative that the only legitimate requirements that should be imposed on associations should be to ensure transparency (A/59/401, para. 82 (l)).

47. Lastly, the Special Rapporteur has observed increasing restrictions worldwide on associations' access to funding, especially funding received from abroad. There is a trend whereby the percentage of funding that an association can receive from abroad is limited, in some cases to as low as 10 per cent. Associations are also obliged in some countries to seek authorization from the authorities before being permitted to conduct fundraising activities.

48. Under the guise of protecting national sovereignty or national interests, some States have enacted legislation that outlaws associations working to defend political rights or engaging in political activities if they receive foreign funding. In at least one case, this amounts to treason under the penal code. In other cases, such

associations are required to indicate on their publications that they are performing the functions of foreign agents.

49. The Special Rapporteur is very concerned about such developments. They profoundly and negatively affect the work of human rights defenders, who are often dependent on funding from abroad to conduct their activities owing to a lack of available domestic sources. She urges States to respect article 13 of the Declaration on Human Rights Defenders, which states in clear terms that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the Declaration. Both the Special Representative and the Special Rapporteur on the rights to freedom of peaceful assembly and of association have emphasized the principle that non-governmental organizations should be entitled to foreign funding to the same extent as Governments (see A/59/401, para. 82 (l), and A/HRC/20/27, para. 69, respectively). The Special Rapporteur agrees completely with this position.

50. Treason charges brought against defenders for receiving funds from abroad to promote political rights and to conduct other advocacy activities are unacceptable for the reasons mentioned above. Such provisions, in addition to those requiring associations to declare that they are performing functions of foreign agents, lead to extensive stigmatization of the work of human rights defenders.

D. Access to information legislation and official-secret legislation

51. Access to information is an extremely important aspect of the work of human rights defenders, given that it enables them to collect information about violations, monitor public authorities and issue informed recommendations to Governments and other stakeholders on how the human rights situation can be improved. The right to seek, have access to, hold and impart information is protected under articles 6 and 14 of the Declaration on Human Rights Defenders.

52. In recent years, an increasing number of States have passed legislation guaranteeing the right of access to information held by public authorities, a development that the Special Rapporteur warmly welcomes. To ensure a conducive working environment for human rights defenders, there remains a need to harmonize such legislation with official-secret legislation, which is used to classify and withhold information that could harm public security.

53. The Special Rapporteur has been informed of cases in which human rights defenders have been charged and convicted because they have disseminated information deemed to be officially secret or taken positions in public in response to such information. This has also happened in States in which legislation permitting access to information is in place. The Special Rapporteur calls upon States to ensure that their legislation permitting access to information is fully compliant with international standards, especially the Joint Declaration on Access to Information and Secrecy Legislation issued by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Representative on freedom of the media of the Organization for Security and Cooperation in Europe and the Special Rapporteur on freedom of expression of the Organization of

American States.[2] The Special Rapporteur emphasizes in particular that the right of access to information should be subject to narrow and clearly defined limitations to protect overriding public and private interests, including the right to privacy. As mentioned in the Joint Declaration, exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information. The burden should be on the public authority seeking to deny access to show that the information falls within the scope of the system of exceptions.

54. Furthermore, official-secret legislation should in no circumstances be used as a tool to silence voices of dissent and persecute human rights defenders. The responsibility to protect information deemed to be secret should lie with Governments, and State officials responsible for this should be held accountable. Human rights defenders, including journalists and media workers, should never be held liable for publishing or disseminating such information. This should also hold true in cases in which the information has been leaked to them, unless they committed a crime to obtain the information.[2]

55. Some information may legitimately be withheld from the public if its dissemination represents a risk to national security, public health or morals or protection of other overriding interests. Such provisions should, however, be clearly defined in official-secret legislation, which should also indicate the precise criteria to be used in determining whether information can be declared secret. In line with articles 6 and 14 of the Declaration on Human Rights Defenders, official-secret legislation should never be used to prevent the disclosure of information that is in the public interest.

E. Defamation and blasphemy legislation

56. The attention of the Special Rapporteur has been drawn to recent cases in which human rights defenders have been charged with defamation and, in some cases, blasphemy because they have published articles, blog entries or tweets or expressed opinions in public. The purpose of defamation legislation is to protect an individual's reputation from false and malicious attacks, which, according to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, is a valid reason for restricting freedom of expression (A/HRC/20/17, para. 83). He has also observed that almost all countries have some form of defamation legislation in place under various terms, including libel, calumny, slander, insult, *desacato* or lese-majesty. He has further noted that the problem with defamation cases is that they frequently mask the determination of political and economic powers to retaliate against criticisms or allegations of mismanagement or corruption, and to exert undue pressure on the media (ibid.).

57. In some countries, criticism of Government representatives, most notably the Head of State, is defined as an offence of defamation under the penal code, normally punishable by fines but in some cases also by months of imprisonment. The Special Rapporteur is concerned that such provisions are used to silence public criticism and serve as an obstacle to public debate about human rights issues, for which public

[2] See www.article19.org/resources.php/resource/3053/en/joint-declaration-on-access-to-information-and-secrecy-legislation.

officials are generally accountable. Article 8 (1) of the Declaration on Human Rights Defenders gives defenders the right to have effective access to participation in the Government of his or her country and in the conduct of public affairs, which in the Special Rapporteur's view is dependent on being able to debate the performance of public officials and the effectiveness of public policies and their compliance with human rights standards. The Special Rapporteur shares the position of the Special Rapporteur on the promotion and protection of freedom of opinion and expression that criminal prosecution for defamation inevitably leads to censorship and hinders expression of dissent, in contravention of the right to freedom of expression (A/HRC/20/17, para. 87). She therefore urges States to decriminalize defamation.

58. Defamation has been decriminalized in several countries in recent years, a development welcomed by the Special Rapporteur. Provisions under civil law continue, however, to be used to target human rights defenders. In several cases, defenders have been ordered to pay fines that are largely disproportionate to the offence committed. The Special Rapporteur shares the concern expressed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression that high and disproportionate financial sanctions risk bankrupting small media outlets, including outlets set up expressly to report on human rights issues, and therefore represent a considerable threat to freedom of expression (ibid., para. 85). Consequently, she calls upon States to ensure that penalties for defamation under civil law are limited in order to ensure proportionality to the harm done.

59. In several countries, statements that undermine religion and/or call religious laws and rulings into question are punished severely by blasphemy legislation. While recognizing the right to freedom of religion and belief, the Special Rapporteur insists on the right of human rights defenders to discuss human rights ideas and issues, including religious practices that might be in contravention of international human rights standards, pursuant to article 6 of the Declaration on Human Rights Defenders. The Special Rapporteur is particularly concerned about the situation of defenders of women's human rights, given that those speaking out against abuses against women in this connection tend to face harsh punishments, including long prison sentences.

60. The Special Rapporteur expresses deep concern that provisions of defamation and blasphemy legislation continue to have a devastating effect on the situation of human rights defenders in many countries. The risk of being prosecuted under such laws leads to self-censorship among defenders, which hinders sincere and profound debates about human rights issues. Such debates being an integral part of the upholding of human rights, the Special Rapporteur calls upon States to revise these laws in accordance with the recommendations made herein.

F. Legislation regulating Internet access

61. Over the past decade, the Internet has become an indispensable tool for the work of many human rights defenders, especially as a means of imparting views, sharing information about human rights and human rights violations and connecting with other human rights defenders. Its potential to assist human rights defenders and the rest of society in bringing about developments favourable to the human rights

situation in a community or country is enormous. The Special Rapporteur is therefore disappointed at the broad restrictions applied to Internet access in numerous countries, including to association, news and social networking websites and blogs. In this context, the Special Rapporteur calls upon States to consider carefully what restrictions are truly necessary, noting that the criteria set out by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his 2011 report to the General Assembly (A/66/290, para. 15) should be followed closely to this end.

62. The Special Rapporteur is also concerned that personal information about human rights defenders obtained through social networking and other websites might compromise their security, especially in the light of new legislative developments authorizing Governments to widely monitor websites in several countries. States should show utmost restraint in this regard and, above all, ensure that such legislation is not used to clamp down on human rights defenders. The above-mentioned criteria developed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression are useful also in this regard.

IV. Minimum standards regarding legislation

63. In the present section, the Special Rapporteur sets out minimum standards that should be applied in the development and application of legislation affecting the activities of human rights defenders. It aims to remind States of international principles that ensure respect for human rights and to show how these can be made operational to ensure a conducive working environment for human rights defenders.

A. Principle of legality

64. The principle of legality is enshrined in article 15 of the International Covenant on Civil and Political Rights, which provides that no one is to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. In accordance with the principle of legality, all legislation must be clearly defined, determinable and non-retrospective. Any law that fails to meet this basic criterion does not comply with the legality principle. Laws must give fair warnings to citizens of the nature of the conduct declared to constitute a criminal or civil offence.[3] Furthermore, in the definition of an offence, the law must stipulate achievable limits on conduct, so that individuals are able to adapt their behaviour within reasonable limits.

65. There are further provisions associated with the legality principle with regard to promulgation of legislation. Before a piece of legislation is adopted, it must be promulgated democratically, meaning that it should be subject to broad consultations with individuals and associations concerned, including civil society.

[3] See also the general principles of international criminal law developed by International Criminal Law Services, available from wcjp.unicri.it/deliverables/docs/Module_3_General_principles_of_international_criminal_law.pdf.

Moreover, once a law is adopted, it must be publicized using the appropriate channels to ensure that the public is aware of what constitutes punishable behaviour.

66. Pursuant to article 15 of the Covenant, the principle of legality prohibits retroactive application of crimes and penalties. To incur criminal responsibility, behaviour must be prohibited and carry criminal sanction at the time of conduct. Article 15 further provides that no heavier penalty may be imposed than that applicable at the time at which the criminal offence was committed. This requires legislation to be enforced in a regular and consistent manner, with penalties handed down as prescribed for in the applicable legislation. The principle therefore protects individuals from State abuse and interference, while ensuring the fairness and transparency of the judicial authority.

67. The Special Rapporteur notes that States have an obligation to ensure that all legislation, including criminal legislation, complies with the principle of legality. For individuals to conduct their lives, including their activities in defence of human rights in a predictable manner, either individually or in association with others, States must ensure that legislation is consistent, reasonable and easily understood by the general public. Consequences of broadly defined laws include the impairment of rights protected under the Declaration on Human Rights Defenders and loopholes within the legal system that could be used to harass and intimidate defenders.

B. Principles of necessity and proportionality

68. The principle of necessity is used in numerous areas of international law and has been invoked by international tribunals in case law. It requires States to ensure that acts that are not in conformity with international obligations are committed as the only way to safeguard an essential interest of the State against a grave and imminent peril, as codified by the International Law Commission in article 25 (1) (a) of its draft articles on responsibility of States for internationally wrongful acts. Article 25 (1) (b) requires States to ensure that such an act does not impair an essential interest of another State or of the international community.

69. The Special Rapporteur concurs with the view of the Special Rapporteur on the promotion and protection of human rights while countering terrorism that specific counter-terrorism legislation should be enacted only following serious consideration of whether it is necessary and that the rule of law also prescribes that the laws restricting the rights to freedom of association and assembly must establish the conditions under which those rights can be limited. Restrictions that would be compatible neither with the law nor with the requirements set out in articles 21 and 22 of the International Covenant on Civil and Political Rights themselves would be in violation of the Covenant (A/61/267, para. 18). The Special Rapporteur is of the opinion that this applies also to other forms of legislation, which should be subject to similar scrutiny on the basis of the principle of necessity before being enacted.

70. While the principle of necessity aims to assess whether the objective of a law is necessary, the principle of proportionality looks at the degree to which the repercussions of the law are proportionate to its objective. In this way, it endeavours to balance individual rights and the interests of the general public. Regional human rights mechanisms have developed interesting models to assess proportionality, such as the "margin of appreciation" applied by the European Court of Human Rights and

"the just exigencies of a democratic society" in the case of the Inter-American Court of Human Rights.[4]

71. In the Special Rapporteur's view, the principle of necessity requires the State to show that the desired result is necessary and that the law in question is the best available means of achieving that result. It must be demonstrated that the impact of the law is as targeted as possible, thereby impairing the exercise of the affecting rights as little as possible. Furthermore, in accordance with the principle of proportionality, the impact of the restrictions must be proportionate and the harm caused by the restrictions cannot outweigh the benefits derived from applying the restrictions. The ability of individuals to exercise their rights to freedom of expression, association and peaceful assembly is an assessment of paramount importance, which the State needs to make as early as possible to ensure that those rights are not impaired.

C. Limited nature of derogations

72. A system of derogations is enshrined in various human rights treaties, including the International Covenant on Civil and Political Rights. This permits States to temporarily modify their obligations in exceptional circumstances, such as in times of emergency, including armed conflicts, civil and violent unrest, environmental and natural disasters.

73. While exceptional measures are permissible in such circumstances, States are required to fulfil requirements as established in law to ensure that during times of emergency derogation clauses do not create a legal vacuum. In particular, States are required to qualify the level of severity, temporariness, proclamation and notification, legality, proportionality, consistency with other obligations under international law, non-discrimination and, lastly, non-derogability of certain rights recognized as such in the relevant treaty. The system of derogation aims to ensure that the rights of individuals are protected during times of crisis by placing reasonable limits on the powers of Government to protect national security.

74. Derogation clauses are provided for in article 4 of the International Covenant on Civil and Political Rights, article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 27 of the American Convention on Human Rights. The list of non-derogable rights varies by treaty, and obligations differ according to the treaty to which the State is a party.

75. The Special Rapporteur wishes to emphasize that a state of emergency does not give State authorities free rein to silence human rights defenders. Any derogation of the right to safeguard individuals working for the protection of human rights must be provided for in law, observe the principles of necessity and proportionality and be justified by specific reasons.

[4] See Cedric Ryngaert, "State responsibility, necessity and human rights", Institute for International Law, Working Paper No. 141 (Leuven, Institute for International Law, December 2009). Available from www.law.kuleuven.be/iir/nl/onderzoek/wp/WP141e.pdf.

D. Principle of non-discrimination

76. The Special Rapporteur underlines that, to comply with their obligations under international human rights law, States also need to respect the principle of non-discrimination, as outlined in section II above. Notably, beyond discriminatory provisions that are prohibited under international law, States should not adopt provisions that can be shown to have a discriminatory effect at their outset. This is made clear in article 12 (2) of the Declaration on Human Rights Defenders, under which States are obliged to provide protection against both de facto and de jure adverse discrimination. The Special Rapporteur notes the importance of broad consultations with civil society in drafting legislation and the willingness of the Government to incorporate feedback from civil society in this regard.

E. Constitutional safeguards

77. The constitutional safeguards provided for by many States offer human rights defenders the rights to freedom of assembly and association, a fair trial and to be free from arbitrary arrest and detention, torture or degrading treatment, among others. Those rights notwithstanding, defenders worldwide face serious constraints when promoting and protecting human rights. Many such constraints are embedded in national laws, including recently enacted legislation.

78. The Special Rapporteur notes that, in some cases, defenders have successfully challenged the constitutionality of oppressive laws, notably in national constitutional courts, often rooted in the argument that the applicable law infringed basic human rights guaranteed in a country's constitution. Such avenues of recourse should be easily accessible to individuals and associations seeking to defend human rights. These procedures being an integral part of the rule of law, States should do their utmost to make them easily accessible to ordinary citizens and their legal representatives.

F. Procedural safeguards

79. Procedural safeguards, including time limits for investigations and the obligation to inform suspects that they are under investigation, are built into criminal legislation in many countries. They are designed to prevent the use of unreliable evidence and to oblige prosecutors to consider evidence impartially. These basic precautions are often ignored, however, with prosecutors in many countries frequently detaining defenders for longer periods than permitted and conducting investigations without informing the defender of the nature of the inquiry carried out or of the subsequent charges.

80. In accordance with international standards, prosecutors are prohibited from continuing proceedings when an impartial investigation demonstrates that the charge is unfounded. These standards are violated through the use of unreliable and uncorroborated evidence. In some cases, prosecutors demonstrate further prejudice toward a predetermined outcome by launching an investigation or filing charges in the absence of evidence. The Special Rapporteur notes with concern that preliminary investigations may be used to intimidate, silence or otherwise deter defenders from carrying out their legitimate activities to promote human rights. This

contravenes international human rights standards relating to the role of prosecutors, notably articles 13 and 14 of the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which state that prosecutors should perform their duties in an impartial and non-discriminatory manner and that they are not to initiate or continue prosecution, or make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

81. Furthermore, in some circumstances, prosecutors fail to inform defendants of the charges against them once the preliminary investigation has been completed or even after they have been arrested. Of particular concern is the practice in some States whereby prosecutors, in addition to other Government officials, equate the promotion of human rights with subversive behaviour, publicly describing defenders as, among other things, terrorists or anti-nationalists, even before a trial has begun. Such behaviour renders a fair trial impossible and breaches the presumption of innocence by which all prosecutors and judicial authorities must abide.

82. The Special Rapporteur also emphasizes the role of judges in ensuring that procedural safeguards are respected. As observed by the Special Rapporteur on the independence of judges and lawyers in her 2011 report to the General Assembly (A/66/289), judges are obliged under international law to ensure fundamental rights are enjoyed without discrimination. She stated that that entailed a proactive duty to ensure that they were upholding international equality and non-discrimination standards in both case deliberations and the application of court procedures. She pointed out that judges could recommend the repeal or amendment of a law or rule if inconsistent with international human rights standards (ibid., para. 38). This is an important procedural safeguard to ensure that unfounded and politically motivated charges are not brought against individuals for having acted in defence of human rights.

V. Conclusions and recommendations

83. **The Special Rapporteur remains deeply concerned that national legislation continues to restrict the activities of human rights defenders. Recent legislative developments in a number of countries are not in compliance with international human rights standards, notably the Declaration on Human Rights Defenders, and do not contribute to a conducive working environment for defenders.**

84. **On the basis of a review of the various types of legislation affecting the activities of human rights defenders, the Special Rapporteur wishes to make the recommendations set out below.**

85. **States should ensure that their anti-terrorism legislation clearly identifies acts defined as terrorism and punishable as such, in accordance with the criteria developed by the Special Rapporteur on the promotion and protection of human rights while countering terrorism (E/CN.4/2006/98, paras. 37 and 38).**

86. **States need to ensure that national legislation designed to guarantee public safety and public order contains clearly defined provisions and that no discrimination is permitted in the application of such legislation, notably in response to the exercise of the rights to freedom of expression, association and peaceful assembly.**

87. **States' legal framework should provide for effective and non-discriminatory provisions governing oversight and accountability of public officials, including law enforcement officials, especially with regard to their responses to peaceful public displays of dissent and demonstrations where human rights issues are being raised.**

88. **States should allow access by non-governmental organizations and national human rights institutions, where such exist, to persons detained under anti-terrorism and other legislation relating to national security.**

89. **States should in no circumstances prosecute human rights defenders for providing legal assistance to persons detained and charged under legislation relating to national security.**

90. **States should respect the right to a fair trial and all procedural safeguards contained in that right when trying suspects under anti-terrorism and other legislation relating to national security, in line with the principles elaborated by the Special Rapporteur on the promotion and protection of human rights while countering terrorism (A/63/223, paras. 31-42).**

91. **States should repeal all legislation that, with the declared objective of preserving public morals, criminalizes the activities of human rights defenders working on sexual orientation and gender identity issues, including laws that have not been applied for a significant period.**

92. **States should do their utmost to protect human rights defenders from judicial harassment, including in cases in which defenders are discharging their functions, notably in defence of sexual and reproductive rights.**

93. **States should in no circumstances criminalize peaceful activities by human rights defenders who operate individually or as part of unregistered associations.**

94. **States should operate a regime of notification, rather than a regime of authorization, for associations that wish to register with the Government.**

95. **States should ensure that submissions from associations intending to register are assessed according to clear and publicly available criteria and processed in a timely manner. States should in no circumstances place limitations on the areas, including rights-based areas, on which an association is allowed to work in order to obtain registration, provided that such activities are peaceful.**

96. **States should ensure that reporting requirements placed on associations are reasonable and do not inhibit functional autonomy.**

97. **States should refrain from imposing legal restrictions on potential sources of funding for associations, including foreign sources. Laws criminalizing activities in defence of human rights carried out with foreign funding, including under treason charges, should be repealed.**

98. **States should ensure that the right of access to information is subject to narrow and clearly defined limitations to protect overriding public and private interests, including the right to privacy. Provisions for withholding information should be clearly defined by law.**

99. **States should not prosecute human rights defenders or subject them to liability for publishing or disseminating information classified as secret. This**

should also apply in cases in which the information has been leaked to them, unless they committed a crime to obtain the information.

100. States should decriminalize defamation and repeal any provision within the penal code that protects public officials from scrutiny and criticism.

101. States should ensure that penalties for defamation under civil law are limited in order to ensure proportionality to the harm done.

102. States should ensure that civil society, national human rights institutions and other stakeholders are involved in a broad consultative process to ensure that the drafting of new legislation is in compliance with the Declaration on Human Rights Defenders and other applicable international human rights instruments. States should provide adequate time for such stakeholders to analyse the implications of the draft law in question and ensure that feedback is easy to provide and taken into account in the preparation of the law.

103. States, including prosecutors, should ensure that criminal cases against individuals, including human rights defenders, are subject to an impartial and independent investigation in compliance with due process standards. All unsubstantiated cases should be closed immediately, with individuals being afforded the opportunity to lodge complaints directly with the appropriate authority.

104. States should ensure that their legislation complies with basic rights enshrined in their constitutions. Avenues of recourse should be readily available to individuals, including human rights defenders, to challenge the constitutionality of existing and new legislation.

105. Judges should proactively uphold international equality and non-discrimination standards in both case deliberations and the application of court procedures.

106. Judges should, when presented with relevant cases, recommend the repeal or amendment of a law or rule if it is inconsistent with international human rights standards.

107. Public officials should refrain from making statements that discredit or stigmatize human rights defenders.

108. Justice and law enforcement officials should familiarize themselves with the provisions of the Declaration on Human Rights Defenders, in addition to the responsibilities that its provisions impose on them.

109. National human rights institutions should be closely consulted in the development of new legislation. They should continue to monitor existing legislation and consistently inform the State about its impact on the activities of human rights defenders.

110. Civil society should provide input to States on the potential implications of draft legislation when such legislation is being developed. Civil society actors should continue to monitor relevant laws and their effect on the working context of human rights defenders.

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Item 70 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Independent Expert on minority issues, Rita Izsák, in accordance with General Assembly resolution 66/166.

* A/67/150.

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Summary

The present report is submitted to the sixty-seventh session of the General Assembly in accordance with General Assembly resolution 66/166 of 19 December 2011. This is the first report to the Assembly prepared by the current mandate holder, Ms. Rita Izsák. The mandate of the Independent Expert was created by the Commission on Human Rights in its resolution 2005/79 of 21 April 2005 and renewed by the Human Rights Council in its resolution 7/6 of 26 March 2008 and subsequently in resolution 16/6 of 24 March 2011.

In 2012, the United Nations marks the twentieth anniversary of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In all regions, minorities face challenges to the full enjoyment of their rights and further national measures are required to implement the Declaration in practice. The present report focuses on the value of institutional attention to minority issues within governmental organs, national human rights institutions and other relevant national bodies as a means of promoting minority rights and mainstream attention to minority issues across all relevant bodies. It considers essential elements of institutional attention to minority issues and provides an overview of some practices adopted by States and the functions, roles and activities of institutions in respect of promoting and protecting the rights of minorities. A key recommendation is that States consider institutional attention to minority rights as an essential component of their human rights, equality and non-discrimination obligations and as a means of implementing practically the Declaration.

Contents

		Page
I.	Introduction	4
II.	Role and activities of national institutional mechanisms in promoting and protecting minority rights	5
III.	Normative framework	6
IV.	The importance and scope of institutional attention to minority issues	7
	A. General considerations	7
	B. Data gathering and analysis	10
	C. Engaging civil society and non-governmental organizations	11
	D. The role of institutions in fulfilling international commitments	12
V.	The importance of institutional attention to minority issues in conflict prevention and the protection of minorities	14
VI.	Essential elements of institutional attention to minority issues	15
	A. Minority participation and representation	15
	B. Accessibility to and for minority communities	16
	C. Ensuring budget and resource allocation	17
VII.	National institutional practices for the protection of minority rights	18
	A. Ministries, government departments and related bodies	18
	B. Autonomous arrangements and institutions	20
	C. Advisory and representative bodies	21
	D. Consultants and focal points	22
VIII.	The role of independent national human rights institutions	22
IX.	Conclusions and recommendations	24

I. Introduction

1. The Human Rights Council has requested the Independent Expert, inter alia, to promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter referred to as "the Declaration"),[1] including through consultations with Governments, taking into account existing international standards and national legislation concerning minorities.

2. The present report focuses on the value of institutional attention to minority issues within governmental bodies, national human rights institutions and other relevant national bodies, as well as the role of regional and international human and minority rights mechanisms in promoting implementation of the Declaration. It considers essential elements for consideration by Governments and other stakeholders, and the functions and activities inspired and undertaken by bodies, including ombudspersons, equality bodies, commissions, and advisory and consultative bodies providing institutional attention to minority issues. The Independent Expert does not promote a particular model or institutional arrangement, but emphasizes the value of dedicated attention to minority issues within the institutional framework considered appropriate by each State in view of national circumstances.

3. Examples are drawn from different regions and the work and official country visits of the mandate of the Independent Expert. On 21 June 2012, the Independent Expert sent a questionnaire to all United Nations Member States relating to their implementation of the Declaration in practice, including questions relating to the existence and functions of institutional bodies and arrangements relevant to minority issues. She thanks those States that have responded to date[2] and includes brief pieces of information derived from these responses where appropriate. Examples used are intended to reflect a range of national practices for ensuring institutional attention to minority issues and their use does not constitute an explicit or implicit endorsement of any institution or its performance.

4. On 22 and 23 May 2012, in Vienna, the Independent Expert participated in an expert seminar on "Enhancing the effectiveness of international, regional and national human rights mechanisms in protecting and promoting the rights of religious minorities", hosted by the Government of Austria, which provided valuable perspectives and information on initiatives designed to protect religious minorities relevant to this report. In addition, the annual sessions of the Forum on Minority Issues have provided information and national examples. The Independent Expert notes that the fifth session of the Forum will be held under the guidance of her mandate on 27 and 28 November 2012. The Forum will focus on "Implementing the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: identifying positive practices and opportunities".

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[1] General Assembly resolution 47/135, annex.

[2] At the time of submission, responses had been received from the Governments of Argentina, Australia, Azerbaijan, Bosnia and Herzegovina, Croatia, Estonia, Georgia, Latvia, Lithuania, Montenegro, Portugal, Qatar, Seychelles and Slovenia.

II. Role and activities of national institutional mechanisms in promoting and protecting minority rights

5. 2012 marks the twentieth anniversary of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In March 2012, the Secretary-General's Policy Committee stressed that the twentieth anniversary should be used to raise awareness and promote implementation of the Declaration and endorsed the establishment of the United Nations Network on Racial Discrimination and Minorities to give strengthened attention to minority issues within the United Nations system. In many countries, examples of constructive approaches, national legislation and institutional attention exist for the implementation of minority rights, equality and the accommodation of diverse groups within society which could be replicated. However, in all regions significant challenges remain for minority communities.

6. Disadvantaged minorities are often the poorest communities and face marginalization and discrimination in respect of their participation in economic life. They are underrepresented in political life and decision-making bodies and lack opportunities to raise their issues at all levels. Certain minority communities experience denial or deprivation of citizenship, with implications for enjoyment of their rights. They often experience poor educational access and outcomes and exclusion from labour markets. Disadvantaged minorities often live in the lowest-quality housing, and in remote or undeveloped regions, and their health statistics are poor relative to other population groups. They often face barriers to achieving access to justice and in some countries face the threat of violence and disproportionate impacts of conflict.

7. Factors including lack of recognition of minorities, discrimination, exclusion and lack of knowledge and awareness of minority issues result in inadequate inclusion of minority issues by national institutions, both governmental and independent, within their work and priorities. Human rights and socioeconomic development policies frequently do not fully take account of their unique circumstances, their rights and their needs and consequently fail to benefit minorities. However, in many States that recognize challenges involving minorities and the need for targeted and mainstream solutions, institutional arrangements have been established incorporating expertise on minority issues which initiate, implement and monitor efforts to promote and protect minority rights.

8. Different approaches to minority rights protection exist based on national circumstances and factors including historical, cultural and religious background and political systems. Some States provide territorial, political or cultural autonomy which facilitates minority participation in regional or local institutions and establish forms of local or minority self-government. Many States officially recognize minorities, adopt constitutional and legislative provisions, and acknowledge that special attention may be required to ensure the enjoyment of their rights in equality with others. Recognition of the existence of minorities remains a precondition for positive national measures and institutional arrangements for promoting minority rights effectively.

III. Normative framework

9. Article 27 of the International Covenant on Civil and Political Rights[3] requires that "(i)n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". The Declaration further elaborates the rights of minorities and the obligations upon States. Numerous provisions within the Declaration require positive measures in legislation, policy and programming to ensure the full and effective participation of minorities in public life. Their implementation may best be achieved through a national policy and institutional framework incorporating targeted attention to minority rights.

10. Article 1 (1) of the Declaration requires that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity". Article 1 (2) requires that "States shall adopt appropriate legislative and other measures to achieve those ends". Article 2 (3) requires that minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live. Article 4 (2) requires that "States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs". Article 5 (1) establishes that "(N)ational policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities".

11. The Committee on the Elimination of Racial Discrimination in its general recommendation No. XVII on the establishment of national institutions to facilitate implementation of the Convention (see A/48/18, chap. VIII.B), recommends that States parties to the International Convention on the Elimination of All Forms of Racial Discrimination[4] "establish national commissions or other appropriate bodies ... to serve, inter alia ... (a) to promote respect for the enjoyment of human rights without any discrimination; ... (b) to review government policy towards protection against racial discrimination; (c) to monitor legislative compliance with the provisions of the Convention; (d) to educate the public about the obligations of States under the Convention; (e) to assist in the preparation of reports to the Committee on the Elimination of Racial Discrimination".

12. In its general recommendation No. XXIX on article 1, paragraph 1, of the Convention (descent), relating to groups including caste-affected communities (see A/57/18, chap. XI.F), the Committee requests States to "(E)stablish statutory mechanisms, through the strengthening of existing institutions or the creation of specialized institutions, to promote respect for the equal human rights of members of descent-based communities". In its general recommendation No. XXVII on discrimination against Roma (see A/55/18, annex V.C), the Committee recommends numerous positive measures including the review and amendment of legislation, adoption and implementation of national strategies and programmes, establishment of effective remedies, and measures to ensure consultation, dialogue and

[3] See General Assembly resolution 2200 A (XXI), annex.

[4] United Nations, *Treaty Series*, vol. 660, No. 9464.

participation of Roma. Their scope implies coordinated, proactive attention to Roma populations by appropriate institutions.

13. Institutional attention to minority issues may result in positive measures targeted at minorities. In its general recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/GC/32), the Committee, citing general recommendation No. XIV, states that "differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate". According to general recommendation No. 32:

> The term "non-discrimination" does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable justification for differential treatment. To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same.

However, positive measures should be justified, timed and monitored.

IV. The importance and scope of institutional attention to minority issues

A. General considerations

14. Ensuring enjoyment of minority rights and equality in practice requires an understanding and appreciation of minority issues and problems facing minorities. Institutionalizing expertise on minority issues allows Governments and independent bodies to identify problems and their causes and to develop sustainable solutions that fulfil the rights of minorities and comply with State obligations. While non-discrimination measures are an essential tool, minority rights protection requires measures that go beyond non-discrimination. Dedicated institutional attention provides necessary impetus for proactive implementation of minority rights, including positive measures, consultative and participatory mechanisms and processes, and activities directed towards disadvantaged minorities, which are often lacking.

15. In States in which minority populations are significant, where inter-community relations are complex, where long-term challenges persist, or where ethnic or religious tensions or conflict exist or have previously occurred, institutional attention may be particularly appropriate. In the European context, for example, it is acknowledged that the Roma require dedicated national attention so as to promote their inclusion in all fields of life, address disproportionate poverty and improve living conditions and health indicators. Discrimination and exclusion are key factors contributing to their disadvantaged situation. Solutions must take account not only of their unique circumstances and target community challenges and the impact of discrimination against Roma, but also of the causes and manifestations of discrimination in the wider society.

16. Institutions mandated to address minority issues can increase minority rights awareness among minority communities and the wider society. They are valuable central sources of information on legislation, policies and programmes and acts that foster discrimination. They can provide advisory services on specific concerns, such as education, employment and housing, and facilitate consultations and debates in which minorities participate. A national institutional framework facilitates legislative and policy development and the design, implementation and monitoring of minority-related programmes. Affirmative action measures that address long-standing discrimination and inequality are often necessary and require institutional attention to specific minority issues or groups. Institutions can conduct studies and social surveys and gather and analyse disaggregated data so as to justify, implement and monitor such measures.

17. Minority rights institutions frequently have proactive mandates that include: reviewing and proposing domestic standards and providing expertise and information to legislation drafting and policymaking processes; monitoring laws and policies with respect to minority rights and recommending amendments or implementation measures; encouraging and coordinating programming on minority issues and strategies devised to address problems relating to minorities; promotion and education activities; developing good practice guides, information resources and reports; developing campaigns and outreach relating to minority rights; and forming a bridge between minority communities and public administration. Importantly, they should not act in isolation on minority issues but, should rather, actively promote mainstreaming of minority issues and cooperation across all relevant bodies.

18. Specialist bodies have a valuable educative role in developing and delivering teaching and training initiatives, which would include educating the general public through such activities as public debates, engagement with the media on minority issues and conducting campaigns and other awareness-raising initiatives. They may promote minority rights within the framework of human rights education initiatives through the development of curricula and provision of school teaching materials appropriate to diverse classrooms, reflecting ethnic and religious diversity, minority cultures and languages, and the histories and contributions of minorities. Dedicated bodies can provide training to staff of public bodies, including the police and judiciary, so as to enhance institutional awareness of minority rights and equality standards and promote the use of tools, resources and good practices relevant to minority rights.

19. Institutionalized expertise helps Governments to respond appropriately to challenges facing specific minority groups. In many countries, for example, linguistic minorities claim their rights, as established in the Declaration, to adequate opportunities for learning and receiving instruction in their mother tongue. Such rights require specialist knowledge of minority communities and their needs and pedagogic methodologies relevant to language education, including bilingual education models and their application. Institutional attention to the rights and needs of linguistic minorities must be a focus of both national policymaking bodies such as the ministry of education, and in municipal authorities responsible for implementing policy and programmes in practice. Specific minority needs may lead States to consider other policy and institutional options, including establishing and supporting minority schools.

20. The Independent Expert highlights the need for increased attention to the rights and security of religious minorities and interfaith dialogue, particularly in countries experiencing tensions and violent attacks against religious minorities. Anti-religious extremism and hate speech encourage discrimination and violence and increase the urgency for human rights mechanisms that address the issues of religious minorities. The Human Rights Council universal periodic review has produced nearly 400 recommendations concerning religious freedom and the rights of religious minorities. Establishing institutional mechanisms to promote interfaith dialogue helps build bridges between faith groups that may have become increasingly polarized and distrustful. The Organization of Islamic Cooperation (OIC) has stated that "it is becoming imperative for Governments to provide due political, social, economic and cultural space to minorities in their societies, including access to decision-making levels".[5]

21. The value of permanent institutionalized participatory and intercultural dialogue mechanisms is emphasized by the Independent Expert. Such mechanisms not only benefit minority communities, but are also essential for eliminating exclusionary practices and changing discriminatory perceptions in respect of minorities, which may exist in wider society and may be institutionalized. Addressing "institutional racism" remains a challenge in many States and requires activities to promote participation and dialogue focused not only on minorities, but on all sectors of society. Coordinated institutional approaches should engage minority institutions and associations, majority communities, and civil society, as key stakeholders and project partners. Institutional measures serve to mainstream minority issues and promote diversity and equality across all areas of public life and institutions.

22. The Forum on Minority Issues at its second session focused on effective political participation.[6] It recognized that it is frequently necessary to adopt positive institutional measures designed to enhance minority participation in decision-making bodies. It recommended parliamentary arrangements, proportional representation and other appropriate electoral systems-related measures that can increase opportunities for minorities to participate. Reserved or shared seats have proved useful in ensuring minority representation in elected bodies. Where minorities are geographically concentrated, forms of devolved power or territorial or political autonomy can facilitate minority participation in regional or local institutions. Political parties are key actors and should adopt measures aimed at engaging minority communities, addressing minority issues and ensuring minority representation. The Forum recommended a specific mechanism or institutional procedure to survey and monitor progress on minority participation.

23. In 2011, the Forum on Minority Issues highlighted the need for dedicated attention to guaranteeing the rights of minority women and girls,[7] who face unique challenges and multiple and intersecting forms of discrimination in such areas as access to education and may be vulnerable to violations, including sexual violence

[5] Statement made by Pakistan on behalf of OIC at a panel discussion at the Human Rights Council, held on 13 March 2012, to mark the twentieth anniversary of the Declaration.

[6] See http://www2.ohchr.org/english/bodies/hrcouncil/minority/documentation_2ndsession.htm.

[7] See the recommendations of the Forum on Minority Issues: guaranteeing the rights of minority women and girls, at its fourth session. Available from http://www2.ohchr.org/english/bodies/hrcouncil/minority/session4.htm.

or trafficking. Specialist units, focal points or consultative bodies within ministries or governmental institutions on women's issues can be a means of ensuring that their issues are adequately and appropriately addressed within institutional mandates. This may require specialist or minority staff sensitive to minority issues, and gender and cultural or religious sensitivities relating to women and girls. Along the same lines, the Forum has recommended that national human rights institutions consider specific mechanisms in their secretariats for addressing issues relevant to minority women and girls.

24. Children and young people belonging to minority groups may face unique challenges and vulnerability owing to issues including poverty and discrimination. Institutions whose work centres on children's and youth issues and education should ensure that their mandates and working practices, projects and programme initiatives are relevant and accessible to minorities. Innovative projects can benefit individual children and may provide venues and opportunities for interaction among young people from different communities, particularly when intercultural and integration perspectives are given attention. Governments may consider supporting specialist civil society youth initiatives. Institutions established to support young people, protect them from possible abuse or exploitation, and provide them with information should also ensure that their services reach and are accessible to those from minorities.

25. Institutional attention to minority rights can assist in international cooperation and prevent international tensions relating to the treatment of minorities. The existence of minorities in a State may have cross-border implications, in cases where, for example, they have a "kin" State or external religious ties. Minorities have the right to maintain peaceful contacts across frontiers. Owing to historical or geopolitical factors, the treatment of minorities may be sensitive. The Office of the High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe has produced recommendations on national minorities in inter-State relations.[8] While protection of minorities is primarily the responsibility of the State of residence, States are encouraged to conclude bilateral treaties and arrangements, share information and concerns, pursue interests and ideas, and support minorities on the basis of friendly inter-State relations. States are recommended to use instruments, including advisory and consultative bodies such as minority councils or joint commissions, and establish mediation and arbitration mechanisms.

B. Data gathering and analysis

26. Data disaggregated along ethnic and religious lines and sex reveal inequalities and are a vital resource for informing policy and programming on minority issues. Data allow targets and objectives to be established based on identified concerns which may include education access and outcomes, labour-market activity, health and housing and provide justification for targeted programmes. National statistical bodies and other relevant government bodies should be mandated to collect disaggregated data as a good practice and develop internal expertise on minority issues, and utilize data collection and analysis methodologies relevant to ethnicity,

[8] *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (The Hague, June 2008).

religion, language and identity. Most countries hold regular national censuses and relevant questions should be included that adhere to personal data protection standards. Specialist attention would allow appropriate indicators to be identified and utilized to assess the relative situation of minorities and the impact of programmes, as measured against established targets.

27. Statistics Canada conducts census and other statistical surveys and includes questions relating to origin, ethnicity, religion and language, thereby allowing comparative analysis of the socioeconomic situation of minorities compared with other population groups. Labour-market activity data revealed disproportionately high unemployment rates among black, Western Asian and Arab communities, for example. An Ethnic Diversity Survey provided insights into how ethnic backgrounds affect participation in social and economic life, a potential resource for programme development.[9] Where Government bodies are not mandated or permitted to collect disaggregated data, independent human rights and equality bodies should play a key role in compiling such information and should develop their own internal expertise.

C. Engaging civil society and non-governmental organizations

28. Non-governmental organizations are often the most active advocates for minority rights and implement concrete and grass-roots programmes. They provide information, expertise and expert services to national institutions and provide an essential information and communication bridge between national authorities and minority communities. They also fulfil important functions, including provision of social support activities conducted within communities and by trained members of minorities. Academic institutions frequently have specialist knowledge of minority issues and conduct essential research which provides Governments that are seeking to strengthen institutional expertise and design appropriate policy and programme measures, with a valuable resource.

29. Institutional engagement with non-governmental organizations brings expertise on minority issues and expands the capacity of national bodies through appropriate programme collaborations. National institutions may benefit from the studies, reports and contacts of non-governmental organizations within minority communities and the access and trust that some non-governmental organizations have secured at the community level. Non-governmental organizations and minority associations provide guidance based on their expert knowledge of specific groups and thematic concerns and are essential partners in consultation processes and the delivery of policy and programme initiatives. Further, governmental institutions and national human rights bodies working on minority issues provide a valuable focus for non-governmental organization advocacy initiatives, enabling them to lobby, build relationships and collaborate with national actors wielding policy influence.

30. Collaborations among civil society groups, ethnic or religious bodies or associations and national or local authorities can provide valuable venues and opportunities for dialogue and understanding between communities and among authorities and minorities. In Marseille, France, "Marseille Hope" is an example of

[9] See the report of the Independent Expert on minority issues on the mission to Canada (13 to 23 October 2009) (A/HRC/13/23/Add.2).

a positive initiative designed to create dialogue and help avert the tensions between faith groups that, once having emerged, can lead to violence. Jewish, Christian, Buddhist and Muslim leaders meet regularly with city authorities to share views and maintain positive relations among communities. Founded in 1989 in response to growing urban violence, it promotes inter-community understanding through activities, including interfaith symposiums.

31. Governments can be important sources of support and funding for non-governmental organizations. Even where Governments establish institutional attention to minority issues, they may consider providing institutionalized support to non-governmental organizations and community groups working with and on behalf of minorities, including in the context of specific services and projects. They should also assist in the establishment of, and provide support to, minority media that provide an essential service and information delivery mechanisms for minorities. However, service provision by non-governmental organizations should not be considered a viable substitute for dedicated Government attention to minority issues and Government-led provision of essential services and allocation of financial resources necessary to improve the living conditions and protect the rights of minorities.

D. The role of institutions in fulfilling international commitments

32. Expert national institutions can assist Governments in fulfilling international commitments, including reporting to United Nations treaty bodies, such as the Human Rights Committee, on minority rights under article 27 of the International Covenant on Civil and Political Rights, and the Committee on the Elimination of Racial Discrimination. States receive minority-related recommendations based on their consideration by treaty bodies, the universal periodic review, special procedures mandate holders and regional monitoring bodies.[10] Specialist institutions can lead efforts to implement recommendations nationally. They also provide a valuable focal point through which guidance, tools and technical cooperation initiatives relating to minority rights may be channelled to the national level. Independent national human rights institutions frequently provide critical analysis of government policy and practice and make recommendations based on their minority rights expertise, including to the United Nations system and regional bodies.

33. Institutional attention to minority issues can be key to achieving anti-racism objectives and in designing and implementing national strategies that ensure consultation with and participation of minorities from planning to evaluation. The 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance urged Governments to develop national action plans against racism and create "conditions for all to participate effectively in decision-making and realize civil, cultural, economic, political and social rights in all spheres of life on the basis of non-discrimination" (para. 99 of the Durban Programme of Action). Action plans provide motivation for activities across institutions and are an important engine for mobilizing attention to equality and minority rights. Their implementation is characterized by mainstreaming initiatives in which numerous

[10] Research conducted by the Independent Expert revealed some 833 recommendations to all States relevant to minority issues following the first round of State consideration under the universal periodic reviews.

bodies work together to achieve common goals. The challenges in planning and management across institutions require institutional leadership so as to ensure that all actors fulfil their responsibilities.

34. Specialist bodies or dedicated departments are beneficial to meeting group-specific goals. In 2011, member States of the European Union (EU) adopted a Framework for National Roma Integration Strategies, recognizing it as a major step towards achieving a more socially cohesive Europe. Member States agreed to prepare, update or develop by the end of 2011, national Roma inclusion strategies, or integrated sets of policy measures within their broader social inclusion policies for improving the situation of Roma. They reaffirmed that national efforts should focus on priority areas of education, employment, health care and housing so as to close the gaps between Roma and the general population.[11] States agreed to appoint a national contact point or use an already existing body to ensure effective monitoring of Roma inclusion strategies and measures and foster the exchange of good practices.

35. National and international actors responsible for developing policy and programmes to achieve the Millennium Development Goals should consider providing dedicated attention to the situation of minorities and projects targeted towards them. In the field of development, poverty alleviation and national strategies for achieving the Millennium Development Goals, the mandate of the Independent Expert has highlighted the need for attention to minorities within national action plans and strategies to ensure that disadvantaged minorities are not left behind or fail to benefit from Millennium Development Goal strategies owing to discrimination, exclusion or neglect.[12] A survey of Millennium Development Goal country reports and Poverty Reduction Strategy Papers highlighted the low level of attention to minorities even in countries with large and impoverished minority communities.[13]

36. Regional intergovernmental bodies can promote national attention to minority issues. The African Charter on Human and Peoples' Rights can be interpreted as containing provisions for protection of minorities; however, in African States attention to minority issues is relatively weak. The African Commission has a Working Group on Indigenous Populations and is encouraged to consider creating a similar body to promote national attention to minorities. The Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations (ASEAN) is drafting a human rights declaration; and the Organization of American States has a working group to prepare a draft inter-American convention against racism and all forms of discrimination and intolerance. Inclusion of strong minority rights provisions in such regional standards could promote and require national attention to minority rights.

[11] See the Presidency report of the Council of the European Union (10665/11), Brussels, 26 May 2011.

[12] See the report of the Independent Expert on minority issues (A/HRC/4/9), sect. I, entitled "Minorities, poverty and the Millennium Development Goals: assessing global issues".

[13] See the addendum to the report of the Independent Expert of 2 February 2007, entitled "Achieving the Millennium Development Goals for minorities: a review of MDG country reports and poverty reduction strategies" (A/HRC/4/9/Add.1).

V. The importance of institutional attention to minority issues in conflict prevention and the protection of minorities

37. The prevention of mass atrocities, intergroup tensions and conflict, including when owing to violations of minority rights, is an important impetus for institutionalizing attention to minority issues, particularly where tensions or conflict exists or has previously occurred. The former Secretary-General, Kofi Annan, remarked that "[W]e must protect especially the rights of minorities, since they are genocide's most frequent targets".[14] The General Assembly in the preamble to the Declaration considered "that the promotion and protection of the rights of persons belonging to ... minorities contribute to the political and social stability of States in which they live". This statement was echoed by Heads of State and Government in paragraph 130 of the 2005 World Summit Outcome,[15] where they also committed themselves to the responsibility to protect populations from genocide, war crimes and ethnic cleansing (paras. 138 and 139), the importance of which is emphasized by the Independent Expert in relation to minorities at risk.

38. Institutionalizing expertise in minority rights before tensions arise enhances the potential to identify problems early and implement effective prevention measures. Under her mandate, the Independent Expert has noted[16] that among the essential elements of strategies to prevent conflicts involving minorities are: respect for minority rights; dialogue between minorities and majorities; and the constructive development of practices and institutional arrangements to accommodate diversity. In the Durban Declaration and Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from 31 August to 8 September 2001[17] States were urged to recognize that techniques, mechanisms, policies and programmes for reconciling conflicts based on factors related to race, colour, descent, language, religion, or national or ethnic origin and for developing harmonious multiracial and multicultural societies needed to be systematically considered and developed.

39. National institutions with minority rights expertise can facilitate arbitration, dialogue, national debate and activities to prevent and find solutions to ethnic or religion-based tensions. Independent bodies are particularly important when a minority group considers the Government to be the cause of its grievances or to be unresponsive to them, or in situations where an independent intermediary is needed to overcome lack of trust between conflicting groups. Under her mandate, the Independent Expert has noted that sustainable peace is highly dependent on the participation of all population groups in peace negotiations and resulting State institutional arrangements.[18]

40. The National Cohesion and Integration Commission of Kenya was created in 2008, following ethnically based election violence, to "facilitate and promote

[14] See Secretary-General's press release SG/SM/9126 Rev.1 of 11 February 2004.

[15] See General Assembly resolution 60/1 of 16 September 2005. Available from http://www.un.org/summit2005/documents.html/.

[16] See the report of the Independent Expert on minority issues (A/65/287), which focuses on the role of minority rights protection in conflict prevention.

[17] See A/CONF.189/12 and Corr.1, chap. I.

[18] See A/65/287.

equality of opportunity, good relations, harmony and peaceful coexistence between persons of different ethnic and racial backgrounds".[19] It advises the Government, and its activities address discrimination on ethnic grounds and seek to promote respect for religious, cultural and linguistic diversity. The Ethnic Relations Commission of Guyana was created following ethnic violence between Indian and Afro-Guyanese communities to monitor and improve ethnic relations and observe political activities. It held cross-country, multi-stakeholder forums prior to 2006 elections, recognizing that elections had become an ethnic and political flashpoint.

41. Where minorities face violence, the presence of local independent human rights bodies can be a deterrent and important monitoring mechanism. The Office of the Ombudsman of Colombia has a Division for Ethnic Minorities and undertakes activities to protect minority Afro-Colombian leaders and communities at risk or violence from illegal armed forces. Local representatives (*defensores comunitarios*) work in sensitive minority areas where the presence of State authorities is weak. They have developed the trust of communities and operate an early warning and risk assessment system (Sistema de Alerta Temprana) under which credible threats are identified and alerts are assessed by security forces and civil institutions, often resulting in protection measures.[20] The present Government has continued the policy of institutional attention to Afro-Colombian issues implemented by previous administrations in creating a Presidential Programme for Afro-Colombian Issues.

42. Developing internal minority rights expertise within such national institutions as the police and judiciary constitutes a positive practice, allowing such key protection and justice bodies to engage and consult more effectively with minority communities, ensure protection measures and respond appropriately to their issues, including incidents of violence. In the eleventh preambular paragraph of its resolution 66/144 of 22 March 2012, the General Assembly recognized that individuals belonging to vulnerable groups including minorities are the main victims of violence and of attacks perpetrated or incited by extremist political parties, movements and groups.

43. Community policing methodologies and measures to ensure that minorities are represented in the police can improve relations between minorities and the police. Good examples of initiatives whose aim is to try to encourage participation of minorities and to enhance effectiveness of law enforcement bodies are the National Black Police Associations in the United States of America, Canada, Bermuda and the United Kingdom of Great Britain and Northern Ireland and the Fraternal Association of European Roma Law Enforcement Officers.

VI. Essential elements of institutional attention to minority issues

A. Minority participation and representation

44. Minorities are often poorly represented in institutions, including human rights bodies and ministries working on central concerns of minorities. Improving minority

[19] See http://www.cohesion.or.ke/.

[20] See the report of the Independent Expert on minority issues on her mission to Colombia (1-12 February 2010) (A/HRC/16/45/Add.1).

representation and participation is a vital component of improving the quality of institutional attention to minority rights. As previously noted, political participation is both a right of minorities and essential to their achieving wider inclusion and participation in decision-making at the national and local levels; and consequently, Governments should both monitor the participation of minorities and implement mechanisms and institutional arrangements that ensure their representation in political and decision-making bodies at local and national levels.

45. A 2009 Office of the United Nations High Commissioner for Human Rights (OHCHR) global survey of national human rights institutions[21] revealed that minorities are poorly represented, with less than half rating their governing body as diverse. It also revealed that minorities are poorly represented as staff at all levels. Minority women are often particularly poorly represented and concrete measures should be taken, including outreach and training initiatives targeted at minorities and specifically at minority women. National institutions should lead by example and ensure that their staff and members fully and publicly reflect the diversity within society. They should be transparent and accountable in their processes to appoint senior representatives. Problems of legitimacy and community trust can result when appointments are considered to have been political or tokenistic and not to have involved minority communities or to have reflected their preferences.

46. Minority staff, including senior representatives and staff at all levels, bring crucial experience, expertise and community contacts and can significantly enhance institutional awareness and capacity on minority issues. They can raise attention to minority issues that may have been neglected, perhaps owing to lack of engagement with minority communities or knowledge of minority situations. They bring insight regarding how to interact with communities and address sensitive cultural or religious concerns, and can articulate the views and perspectives of minorities who would otherwise lack a voice. Minorities may be employed in specialist roles or sections; however, they should not be confined to such roles.

47. Minorities are often underrepresented in the civil service, police and judiciary owing to barriers including institutional racism, discriminatory recruitment practices, poor educational attainment, and psychosocial factors inhibiting them from seeking employment. Measures including targeted recruitment initiatives should be adopted and promoted in the public and private sectors. Minorities should be represented in oversight and regulatory bodies, for example, those relating to the police service. They can have important advisory roles relating to recruitment and policing practices and should be represented in complaints-handling bodies. Representation of minorities in national media and media regulatory and monitoring bodies helps to ensure appropriate treatment of minority issues by and in the media, which can portray minorities in discriminatory, negative or stereotypic ways.

B. Accessibility to and for minority communities

48. Disadvantaged minorities are often poorly placed with respect to accessing information and services. Poverty, socioeconomic disadvantages, remote localities, and education or language barriers are obstacles to obtaining services and engaging

[21] "Survey on national human rights institutions: report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide" (Geneva, July 2009).

institutions. Some may have negative experiences of interactions with institutions which may not have met their expectations or addressed their concerns. Institutions should establish channels and processes of communication and consultation with minorities and build trust with minority communities. Efforts to raise awareness of the institution and services should target minorities and include advertising in and through minority media and in minority localities. Publications, information and services should be available in minority languages, including through dedicated websites.

49. Minority issues frequently exist in local or regional contexts. Local or sub-offices of human rights bodies can develop strong knowledge of localized minority rights issues, monitor evolving situations and build relationships with communities and authorities, and they are well placed to respond effectively to minority issues. Minority communities are more likely to engage with bodies in their localities, particularly those employing staff from minority communities who speak minority languages and maintain community contacts. Local offices assist in the mapping of minority communities and issues and help to ensure that local issues and concerns are reflected in regional- or national-level decision- and policymaking. Further, they can ensure that national policy and programmes reach and benefit minorities in remote regions.

50. The 2009 survey of national human rights institutions by the Office of the High Commissioner revealed that less than half of respondents described their relationship with marginalized groups as strong. In terms of online accessibility for minority groups, only 8 respondent institutions out of 61 indicated that their website was available in all minority languages. The large majority of respondents did not provide data relating to the proportion of complaints received from minorities or indigenous peoples, indicating that they did not gather disaggregated data relating to the use of services and lacked dedicated attention to such groups. Institutions should develop inclusive and participatory methodologies to ensure consultation with and participation of minorities in all relevant aspects of their work.

51. Outreach is essential to ensuring that potential beneficiaries are aware of institutions and their services. An EU-wide survey of 23,500 people from minority groups by the European Union Agency for Fundamental Rights, the Minorities and Discrimination Survey (EU-MIDIS), revealed that over one third of respondents who claimed to have been discriminated against on the grounds of their ethnicity did not know how or where to report their experiences.[22] Some 82 per cent of minority respondents who reported experiencing discrimination did not report their experience to any formal body.

C. Ensuring budget and resource allocation

52. Some concerns have been expressed that the establishment of dedicated institutions for minority-related issues or particular groups can be a means of, or result in, sidelining minority issues into parallel, inferior or poorly funded bodies rather than dealing with those issues within appropriate mainstream institutions and

[22] See European Union Agency for Fundamental Rights, "EU-MIDIS at a glance: introduction to the FRA's EU-wide discrimination survey", p. 9, figure 4; see also EU-MIDIS, Data in Focus report No. 3 on "rights awareness and equality bodies". See further http://fra.europa.eu/fraWebsite/attachments/NHR1_en.pdf.

processes. Where dedicated institutions or bodies are created, financial resources must be sufficient to enable them to conduct the full range of mandated activities; and separate budget lines should be provided and guaranteed. Where the mandates of existing human rights bodies are enlarged to incorporate minority issues, their capacity, resources and staffing should also be enhanced.

53. A recent trend towards integration of specialized minority and ethnic equality bodies into wider human rights institutions has been identified in the European context. Funding issues, rather than real or perceived lack of need, may contribute to decisions to abolish or merge institutions, particularly in the context of the current global financial crisis. However, economic conditions should not be considered a valid reason to reduce necessary attention to minority issues. Merger of institutions should not weaken the required institutional attention and resources dedicated to minority issues or limit their independence or the scope of their work.

54. While institutional attention to minority issues has financial implications, it can still be cost-effective, particularly where early implementation of minority rights helps to avert tensions among communities. Dedicated programmes can improve minority access to education, training and employment, with benefits to minorities and States resulting from the enhanced participation of minorities in economic life. Studies demonstrate the untapped economic potential within marginalized minorities and that integration is not only a moral and human rights obligation but an economic necessity.[23] Where financial constraints exist, low-cost measures include recruitment of minority experts and consultative methodologies, which can significantly strengthen institutional expertise.

VII. National institutional practices for the protection of minority rights

55. Governments have the primary responsibility for implementing minority rights. Establishing a Government body, agency, department or equivalent institution with dedicated attention to minority issues provides an institutional focus for government activities and offers the potential for proactive policy and programme initiatives and targeted approaches to the challenges involving minorities. It demonstrates governmental commitment to minority rights and should ensure that minority issues are consistently integrated into governmental policies and, essentially, mainstreamed throughout governmental bodies. Considered briefly below are some forms of institutional attention to minority issues adopted by Governments at the national level.

A. Ministries, government departments and related bodies

56. Some States have established dedicated governmental bodies, including ministries or Government departments, on minority issues. Such bodies often have primary responsibility for designing, directing and leading government policy on

[23] See the policy note entitled "Roma inclusion: an economic opportunity for Bulgaria, Czech Republic, Romania and Serbia" (World Bank, Human Development Sector Unit, 30 September 2010). Available from http://siteresources.worldbank.org/INTROMA/Resources/Policy_Note.pdf.

minority issues, but the Independent Expert emphasizes that they are most effective when working closely with other line ministries on minority issues and coordinating mainstreaming across ministries. Such dedicated institutional attention gives a strong signal to minorities and wider society that Government recognizes minority issues and takes them seriously. Some Government bodies or initiatives are given a particularly high public profile and status by placing them under high-level political leadership.

57. Government bodies may benefit from significant, secure funding allocated to State institutions. Relatively high levels of accountability are required of Government bodies regarding appointments to senior positions, annual reports, accounts, and analysis and monitoring of projects and their impact on minorities. They may face valuable scrutiny of their performance by media and civil society. One criticism of Governmental bodies is that they may face review or abolition following changes of political administration. Consequently, they will ideally exist alongside secure independent human rights institutions that also focus attention on minority issues.

58. Dedicated Government institutions may elaborate valuable mission statements and objectives providing important political messages on minority inclusion and equality, which may explicitly reflect challenges facing minorities. The Ministry of Minority Affairs of India is "empowering the minority communities and creating an enabling environment for strengthening the multiracial, multi-ethnic, multicultural, multilingual and multi-religious character of our nation", and its objective is "to improve the socioeconomic conditions of the minority communities through affirmative action and inclusive development".[24] Such public commitments provide a valuable opportunity for civil society engagement and advocacy.

59. Institutional approaches are particularly important that seek to ensure coordinated policy and programming initiatives incorporating all relevant ministries and other national stakeholders. They may develop and take the lead in implementing a national policy framework and devise cross-ministerial strategies and programmes in consultation with minorities and other stakeholders. Holistic, coordinated approaches recognize the interconnected nature of such issues and ministerial priorities such as health and housing, education and employment, and may facilitate policy and programming responses that comprehensively address problems facing minorities and their underlying causes.

60. The Government of Montenegro highlighted the fact that its Ministry for Minority Rights has a mandate to monitor, study and protect minority rights in accordance with the Constitution and international standards. Other ministries and government bodies are mandated to address issues of minority rights within their fields of responsibility, including the Ministries of Justice and Human Rights, Culture, Education and Sports, Internal Affairs, and Labour and Social Welfare.

61. Lithuania informed the Independent Expert of its Division for National Minorities Affairs in the Ministry of Culture. The post of Vice-Minister of culture for national minorities affairs was introduced in 2011, demonstrating the Government's special attention to national minority issues. A Council of National Minorities operates under the Ministry of Culture and plays a key role in consultation on minority issues with public authorities. Twenty-nine recognized national

[24] See http://www.minorityaffairs.gov.in/vision_mission.

communities are representatives in the Council, which analyses legal acts and makes recommendations concerning the preservation of national identity.

62. Bosnia and Herzegovina highlighted the existence of a department for the protection of the rights of, and cooperation with, national minorities and religious groups, which exists within the Ministry of Human Rights and Refugees. It employs national minorities; in this regard, Roma coordinators work in the Ministry and in four regional offices. A Department for Minorities also operates within the ombudsman's office. Councils of national minorities at the State level and within autonomous entities function to preserve and develop ethnic, national, religious and cultural identity and assist efforts to reintegrate communities.[25]

63. The Government of Brazil has established institutional attention to Afro-Brazilians in recognition of discrimination and the disproportionate socioeconomic disadvantage of Afro-descendants, including through its ministry dedicated to promoting policies for racial equality, the Secretaria de Políticas de Promoção da Igualdade Racial (SEPPIR).[26] A statute of racial equality (law 12.288), adopted in 2009, reinforces State obligations to guarantee equal opportunities to Afro-Brazilians. Affirmative action projects combat structural inequalities, in particular in respect of access to education, health and employment.

64. The National Council for Cooperation on Ethnic and Integration Issues of Bulgaria is headed by the Deputy Prime Minister. It coordinates State programmes and policies relating to ethnic minorities and monitors implementation of integration policies, in consultation with all relevant stakeholders. Non-governmental organizations representing minorities, including Roma, are members.[27] The High Commissioner for Immigration and Intercultural Dialogue of the Government of Portugal, within the Ministry of the Presidency of the Council of Ministries, has a specific mandate to address minority rights and a specialist office for support to Roma people.

65. The Committee for Ethnic Minority Affairs of Viet Nam is a ministerial-level body responsible for planning and implementation of ethnic policies and those for mountainous regions where minorities frequently live. It manages the development, implementation and monitoring of programmes, and coordinates liaison between ministries and with international agencies and donors. Its priorities include socioeconomic development programmes designed to address the causes of poverty, improving education and training local officials. It is part of an institutional structure including the Ethnic Council of the National Assembly, which advises the National Assembly on ethnic minority matters and reviews draft laws.

B. Autonomous arrangements and institutions

66. Some States take approaches that allow varying degrees of regional, territorial or political autonomy. Where minorities are geographically concentrated, decentralized

[25] The Independent Expert will conduct an official visit to Bosnia and Herzegovina in 2012 at the invitation of the Government.

[26] Statement to the 2010 Forum on Minority Issues on minorities and effective participation in economic life.

[27] See the report of the Independent Expert on minority issues on her mission to Bulgaria (4 to 11 July 2011) (A/HRC/19/56/Add.2 and Corr.1).

forms of government often allow minorities a stronger role in institutions and decision-making bodies. In appropriate circumstances, States have devolved power, and created autonomous or other sub-State divisions or federal systems that may enable minorities to have a more significant and direct impact on matters affecting them. The concept of "subsidiarity" promotes decision-making at the lowest level of government consistent with the goals to be attained and is highlighted as valuable in the context of minority rights, including in recommendations of the Forum on Minority Issues on minorities and effective political participation.

67. Forms of non-territorial or cultural autonomy can also serve to preserve elements of minority history, language and culture and may foster dialogue; they may involve establishing institutional arrangements such as local or minority self-governments. Local self-governments fulfil responsibilities in particular in the field of minority education and cultural self-administration, media, the fostering of traditions and cultural heritage, and social inclusion.

68. The Act on the Rights of Nationalities of Hungary of 2011[28] includes the right to establish "nationality self-governments" for recognized minorities, based on a system originally established in 1993. Self-governments provide an institutional framework for cultural autonomy, there being hundreds of self-governments at the local level with elected minority representatives. Similarly, Estonia indicated to the Independent Expert that ethnic minorities have the right to establish institutions of self-government in accordance with the National Minorities Cultural Autonomy Act, and that a Council of Ethnic Minorities exists within the framework of the Ministry of Culture.

C. Advisory and representative bodies

69. The commentary of the Working Group on Minorities of the former Commission on Human Rights to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (E/CN.4/Sub.2/AC.5/2005/2) notes that "States should establish advisory or consultative bodies involving minorities within appropriate institutional frameworks. They should be attributed political weight and effectively consulted on issues affecting the minority population".[29] Advisory and consultative bodies can be permanent or ad hoc. They help to institutionalize dialogue between government and minority representatives and to ensure that minority issues are reflected in local and ideally national policy- and decision-making processes. Appropriate advisory and consultative bodies should therefore exist at the national level and at regional and local levels, where challenges affecting minorities frequently manifested themselves.

70. The Government of Latvia noted the existence of three national-level consultative bodies: the Consultative Council on Minorities, under the President; the National Minority Non-Governmental Organization Committee, under the Ministry of Culture; and the National Minority Education Consultative Council, under the Ministry of Education and Science. At the local government level, society integration commissions have broad minority participation. The Government of

[28] See the Act on the Rights of Nationalities of Hungary, paras. 113-115. Available from http://www.venice.coe.int/docs/2012/CDL-REF(2012)014-e.pdf.

[29] Available from http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/133/85/PDF/G0513385.pdf?OpenElement.

Georgia provided information on its institutions, including a Civil Integration and Tolerance Council, a Council on National Minorities set up to facilitate dialogue between Government and national minorities, and a Council of Religions, promoting dialogue, integration and participation of religious associations.

71. Permanent assemblies or political bodies can facilitate minority representation in national political structures. The members of the Assembly of the People of Kazakhstan represent 40 of the largest ethnic groups. The Government states that it revives and promotes ethnic cultures, languages and traditions; strengthens inter-ethnic unity and harmony through the monitoring of ethnic relations; and makes recommendations on State policy. Deputies in the lower house of the parliament are appointed from among the members of the Assembly. The House of Federation of Ethiopia, which is the upper house of the parliament, is composed of representatives of over 60 "nations, nationalities and peoples". It is intended to act as an assurance mechanism for the rights of ethnic groups, as established in the constitution. Such bodies must be based on principles of democratic accountability and electoral legitimacy.

D. Consultants and focal points

72. Institutions, including ministries, may decide to have dedicated advisers, consultant posts or focal points within their institutional structures that have responsibility for minority issues. While such posts provide relatively low-level institutional attention, compared with dedicated institutions or departments, they can nevertheless fulfil important functions, raise awareness of minority issues in key policy and programme areas, and demonstrate institutional will to respond to minority concerns. Where advisory posts or focal points exist in different ministries, they may have the potential to promote coordination and information-sharing and joint projects. Given the specialist nature of such roles, priority should be given to the recruitment of minorities, including minority women.

VIII. The role of independent national human rights institutions

73. National human rights institutions are independent, autonomous bodies created by law and should function in compliance with the principles relating to the status of national institutions (the Paris principles) (General Assembly resolution 48/134, annex). National human rights institutions include human rights commissions, ombudsman's offices, and specialized institutions designed to protect the rights of disadvantaged or vulnerable groups.[30] In 2005, the United Nations Working Group on Minorities of the former Commission on Human Rights noted that national human rights institutions can contribute significantly to the promotion and protection of the rights of minorities and that there is growing recognition of the contribution that these institutions can make to safeguard the rights of the less advantaged groups of society, in close partnership with them.[31] Nevertheless, frequently such institutions lack clear and proactive mandates for addressing minority issues.

[30] See "UNDP-OHCHR toolkit". Available from http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf.

[31] See E/CN.4/Sub.2/AC.5/2005/3.

74. The Paris principles require bodies to address racial discrimination proactively, including by increasing public awareness through provision of information and education and by making use of all press organs. The Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme (UNDP) have highlighted the fact that in some States the rights of groups including minorities may be controversial and contested and that national human rights institutions "are frequently the only ones that can and do speak out in defence of those who have no voice, or whose influence is minimal".[32] They frequently provide vital critical assessments of Government policy and practice, including through reports to United Nations treaty bodies that provide non-governmental perspectives and substantive recommendations. With specialist minority expertise, they are well placed to advise Governments and critique their minority-related policy and practice.

75. Owing to financial factors, administrative and resource burdens and the importance of institutional identity, strong general human rights institutions are preferred by many States. However, the European Centre for Minority Issues states that "given the importance of minority issues to both the minority and the majority communities ... the appointment of an officer or establishment of a specialized department in the field of minority protection can only be welcomed".[33] In reality, departments or sections may work within less well defined policy and mandate frameworks than those of dedicated bodies, and may face staff and resource restrictions. Senior appointments, including such posts as deputy ombudsperson for minorities, could be regarded as maintaining appropriate high-level focus on minority issues.

76. Dedicated minority ombudsperson's offices, commissions or racial equality bodies, with clearly defined minority rights mandates, can create strong institutional identity and relatively high issue-visibility. Their mandates commonly demonstrate proactive, wide-ranging activities. The Ombudsman for Minorities of Finland, for example, works to advance the status and legal protection of ethnic minorities, as well as equality, non-discrimination and good ethnic relations.[34] Its activities include: providing guidance on ethnicity issues and information and training on ethnicity; influencing topical issues by participating in public debates; and issuing statements. It supervises compliance with the non-discrimination act, offers legal opinions and advice and undertakes reconciliation.

77. An important role of independent human rights bodies is in provision of complaint-handling services. Disadvantaged minorities may be reluctant to report incidents of discrimination or lack information or resources that enable them to make or pursue complaints. Specialist bodies frequently provide legal assistance and advisory services. They may offer alternative pathways, including mediation services that pursue solutions outside the courts and provide relatively quick, free and less formal access to remedies. However complaint-handling activities should include the ability to conduct investigations based on information or complaints received and to initiate or pursue legal action in the courts and/or refer cases to other appropriate bodies, including tribunals.

[32] See http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf.

[33] See http://www.ecmi.de/uploads/tx_lfpubdb/Ombudsman_guide_English.pdf.

[34] See http://www.vahemmistovaltuutettu.fi/english.

78. European Union member States must set up equality bodies that address race and ethnicity in compliance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. They are required to provide independent assistance to victims of discrimination on ethnic or religious grounds. They should also conduct independent surveys and publish reports and recommendations relating to discrimination.[35] Consequently, there is a relatively high number of dedicated equality institutions in Europe compared with other regions without such binding directives. Nevertheless, frequently, equality bodies focus primarily on non-discrimination and rarely give essential proactive and dedicated attention to minority issues.

79. National commissions exist in numerous countries and may be general bodies or address thematic or group specific issues. For example, the Government of Germany has established a model of minority commissioners who work to promote and ensure liaison between the Government and minorities. At the federal level, there is a commissioner for both national minorities and immigrants who reports to the Minister of the Interior. The Government of Slovenia highlighted its Commission for the Protection of the Roma Ethnic Community and its Commission for the Hungarian and Italian national minority communities, which have representatives from such minority groups.

80. Among other institutions of the Government of Austria, its Equal Treatment Commission is handling ethnic and religious discrimination cases, including those relating to employment and the workplace, and addressing such issues as access to employment, working conditions, harassment and freedom of religion. The Ombudsperson for Equal Treatment of Austria can intervene and negotiate with employers on discrimination cases and submit applications to the Commission. The Ombudsperson offers information on rights and equality, provides training and can impose penalties in cases of discrimination and harassment.

81. Besides its National Human Rights Commission, Nepal also has a National Dalit Commission, which was established in 2002 in recognition of the fact that caste discrimination and untouchability practices continue. It promotes implementation of national and international law and advocated for the Caste-based Discrimination and Untouchability Act, adopted in May 2011, which criminalized such discrimination in private and public spheres. Among its activities was the organization of a 100-day campaign against caste discrimination, in collaboration with the office of the United Nations High Commissioner for Human Rights in Nepal, launched in September 2011 by the President and the High Commissioner.

IX. Conclusions and recommendations

82. **The twentieth anniversary of the adoption of the Declaration provides an opportunity for States to consider practical measures for enhancing its implementation. Necessary efforts towards achieving positive and systematic change so as to ensure a culture and practice of minority rights and equality require political commitment and proactive approaches that are often lacking. While non-discrimination measures are essential, minority rights frequently**

[35] See http://www.equineteurope.org/564239.html.

require States to implement positive measures and approaches, as articulated in the Declaration, to ensure equality.

83. Positive change in the situations of disadvantaged minorities can be provided by appropriate institutional attention to minority rights and a policy and programme framework within which to address minority issues. Legislative protection of minority rights in national law is an essential foundation; and the logical next step, from legislation to concrete action for the protection and promotion of minority rights, is provided by institutional attention.

84. Institutional attention to minority issues is essential to changing the exclusionary practices and discriminatory perceptions about minority groups in wider society that may be institutionalized. Activities should therefore be focused not solely on minorities, but rather on all sectors of society. Coordinated institutional approaches should engage minorities, majority communities, and civil society as key stakeholders. Institutional measures should serve to mainstream minority issues within all relevant institutions and promote diversity and equality in all areas of public life.

85. When they have easy access to institutions providing channels of complaint and remedy, including in their own languages, minorities are more likely to engage such bodies, and bring complaints of discrimination, which too often go unreported and unchallenged. Institutional attention to minority issues conveys a positive message to minorities, namely, that government recognizes their issues and concerns, and is committed to finding solutions to challenges involving minorities; and it also helps to instil confidence within communities. This may be particularly important in times of political and social upheaval, or administrative or regime change, or following conflict involving or impacting upon minorities.

86. The full and effective participation of minorities is fundamental to the realization of minority rights and a key objective of national institutional attention to minorities. Effective attention can be achieved only with the participation of minorities, both as staff and as partners in the work of institutions addressing minority issues. It should always be remembered that minorities are members of society and should have their full say on issues involving all aspects of society, and not only on those issues of particular minority concern. In cases where they do not have that say, institutional attention to minority rights and minority issues is a means of enhancing their participation in all aspects of the economic, social and political life and development of their countries.

87. There are no one-size-fits-all solutions and the most appropriate approaches to minority protection depend on national circumstances, and the situations of minority groups, as well as cultural, geographical, historical, political and socioeconomic factors. Whatever approach is taken, the principles of recognition of minorities, and of consultation with and effective participation of minorities should be fully complied with.

Recommendations

88. **The Declaration and other relevant international and regional minority rights standards should be incorporated into domestic law, thereby providing a strong legal basis for institution-building and strengthening in the area of minority rights.**

89. **States should consider specialist national institutions mandated to address minority issues, including dedicated departments, sections or focal points within national institutional frameworks and national human rights institutions. Permanent and ad hoc consultative and advisory bodies addressing minority issues should be considered.**

90. **Expertise on minority issues should be mainstreamed into the mandates of all relevant ministries and governmental organs and national human rights institutions. Those particularly relevant to minority concerns, including in the fields of education, employment, health, housing and culture, should collaborate in the development of joint initiatives and programmes targeted towards disadvantaged minorities.**

91. **National statistical agencies and other relevant government bodies and departments should be mandated to engage in the collection of disaggregated data, as a good practice in the field of minority issues, and develop internal expertise on minority issues, and on data collection and analysis methodologies relevant to ethnicity, religion and language.**

92. **Institutions mandated to address minority issues should be adequately funded, resourced and staffed to enable them to fulfil their mandates effectively and to respond appropriately to the challenges, requests and needs of minorities.**

93. **Institutions working on minority issues must be transparent and accountable to minorities, including with regard to processes for electing or appointing senior representatives and staff and their methods of work and activities.**

94. **Institutional practices and methodologies should be adopted and promoted to ensure the full and effective representation of minorities in institutions and the participation of and consultation with minorities in all aspects of institutional work.**

95. **Awareness-raising activities should promote knowledge of specialized minority rights and equality bodies or departments or relevant agencies, and of their services. Outreach should be targeted towards minority communities, including through minority media, and in minority localities. Information and services should be provided in minority languages.**

96. **Governmental and independent national human rights institutions should lead by example and ensure that their governing bodies and staff, including at senior levels, reflect the diversity within society, and ensure as well the representation of minority women. Diversity in public and private sectors should be promoted and monitored.**

97. **Institutions or departments working on women's issues should establish specialist units or focal points for minority women and girls so as to ensure adequate attention to their issues and should recruit minority women.**

98. **Regional or local sub-offices of human rights institutions and other relevant bodies should be considered, including in areas with concentrated minority communities and in localities where communities may face particular challenges, including violence, conflict or displacement.**

99. **Recent examples of interreligious tensions and violence demonstrate the need for dedicated institutional attention to religious minorities and interfaith dialogue. Efforts to improve understanding and build positive relationships between faith groups should engage religious leaders, institutions and communities from all faith groups.**

100. **International bodies with a national presence, including United Nations bodies and specialized agencies, should consider institutional strengthening so as to ensure required expertise and attention to minority issues and should employ staff from minorities, where appropriate.**